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# CONSTITUTIONAL DOCUMENTS OF CANADA

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# STATUTES, TREATIES AND DOCUMENTS OF THE CANADIAN CONSTITUTION

## 1713 – 1929

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# PREFACE TO THE SECOND EDITION

After twelve years a new edition of this collection of documents has been called for, and the Oxford University Press has generously given me an opportunity to revise and enlarge it. I have done so with greater ease owing to the fact that many of the collections which were not available when the first edition appeared have been reprinted, and I am thus able to omit documents which can now be easily consulted. In addition, I have benefited, I hope, from criticisms, and greatly reduced the documents for the period 1791–1840. Many of them have been found superfluous in their endless repetitions, and, at any rate, they can now be referred to with greater facility owing to the increasing interest in and wider dissemination of Canadian historical material since 1918. I have thus made room for more modern material, especially from Bagot's dispatches and from the documents since 1867. I have seen no reason to change my opinions about editing and I adhere to the plan suggested in the preface to the first edition. The book is primarily for students, and one of their most important duties is to learn for themselves to use documents and not to rely on an editor.

It is a pleasure, within so few years for a book of this nature, to prepare a new edition. I am glad to know that the older one has been in use throughout the Anglo-Saxon world and in the universities and government offices of most European countries.

I should like to thank all those who have helped me and to add specially to the names of older friends those of Mr. F. H. Underhill, professor of history in the University of Toronto, and of Mr. N. A. MacKenzie, my colleague in law, who have given me generously of their advice and time. My wife has seen the book through the press and compiled the index, which is meant to provide a reasonable method of reference, as it was impossible for reasons of space to index the volume in the detail which I should have liked. The dedication records memories deeper and more personal of two of my students, whose careers were cut off at the beginnings of brilliant promise.

W. P. M. KENNEDY.

UNIVERSITY OF TORONTO.

*4th December*, 1929.

# PREFACE TO THE FIRST EDITION

My primary object in publishing this collection of documents has been to provide students of Canadian constitutional development in the University of Toronto with a handy and convenient volume. I have not therefore thought it necessary to edit the documents in close detail. The notes which I have provided are meant to encourage work rather than to give full information. Nor have I written a long historical introduction. The history of the Canadian constitution can be divided into well-defined periods. I have arranged the documents selected for each of these periods in chronological order so that the student can easily follow the development which they suggest, and I have linked each section with introductory notes in which I attempt to sum up, briefly and in broad generalization, the history to which the documents afford illustrations. With the growing interest, however, in constitutional history, especially within the British empire, I venture to hope that the volume may prove useful to a wider circle of readers than those for whom it has primarily been compiled.

If such a volume as this needs a defence, necessity and experience must bear the burden of it. Many of the well-known volumes of documents—e.g. by Messrs. Shortt and Doughty, Professors Egerton and Grant, and Mr. W. Houston—are out of print, and even had they been accessible, none of them fulfilled exactly what experience had taught me was necessary—a single volume in which acts of parliament, ordinances, proclamations and such dry-as-dust material would be vitalized by being brought into touch with letters, speeches and contemporary illustrations. These are of the greatest help in making dull documents live, and in giving that contemporary outlook which is the hardest thing to acquire. Experience has guided me, too, not only in compiling the book, but in selecting the documents. To the skilled student of the subject my selections may appear arbitrary; but I have tried to include no document which has not proved its value in actual teaching, and I have excluded many which, whatever their intrinsic importance, have not satisfied that test. The actual test itself is, I feel, arbitrary; but when a selection had to be made, it served a practical and useful purpose. I have omitted any selections from Lord Durham's *Report*, which must be read as a whole by all students of the Canadian constitution, and selections from it would be superfluous. I have also excluded any select cases illustrating the workings of the British North America Act of 1867. The cases are too numerous and too confusing for selections in a volume such as this.

With regard to the text, I have as a general rule strictly adhered

to the sources given at the head of each document. I have also purposely referred to Christie's *History of Lower Canada* as a source, because the reference will help the student. As far as possible, however, I have collated documents taken from Christie with official copies. On the whole, Christie gives an accurate text.

I should like to acknowledge my thanks to the Dominion Archivists, to Professors Egerton and Grant, and Mr. W. Houston, whose work in the same field has made mine all the more easy. I owe much to the kindness of officials in the various libraries where I have worked, especially to those of the Legislative Library, Toronto. The Librarian of that Library has gone to the trouble of having most of the parliamentary papers relating to Canada bound together under years. These he has called *Imperial Blue Books Relating to Canada.* Under that title I refer to documents which will also be found in the British Parliamentary Papers. This admirable arrangement has saved me hours of work.

W. P. M. KENNEDY.

UNIVERSITY OF TORONTO,
1*st February*, 1918.

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of no governmental influences; Napoleon's successes have turned their heads, and they are avowedly preparing to bring Lower Canada under his dominion; this idea is unfortunately becoming popular; the faction in the house of assembly hold the ignorant electors in the hollow of their hand, and the latter now look on 'La Chambre' as the real government; the newspaper *Le Canadien* vilifies the officials; 'La Nation Canadienne' is the general idea of the province in the popular mind, which is now turned, as never since the conquest, to France for aid; growing objections to the settlement in 'the townships' as detrimental to the unity of 'La Nation Canadienne'. Craig advises the suspension of the constitution, so serious is the outlook. He does not favour reuniting the provinces, which would only be 'a heterogeneous mixture of opposing principles'. Perhaps a redistribution of seats, some increase in the franchise and a good qualification for membership of the assembly would be, in the crisis, more immediately practicable, and the bishop must be brought under the clear law. Ryland, his secretary, is going to England to urge the seriousness of the situation and to promote his suggestions.

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XCVI. An Act to make Temporary Provision for the Government of Lower Canada (1 & 2 Victoria, c. 9), February 10, 1838 . . 350

XCVII. Report of the Select Committee of Upper Canadian Assembly on the State of the Provinces, February 8, 1838 . . . . . 352

Suggests a legislative union, on a federal basis, of all the north American colonies, and a declaration in due and solemn form of the queen's sovereignty over them; the changing of the title 'governor' to that of 'viceroy', and the holding of the office by one of the royal dukes. Discusses the idea of the union of the provinces. Only the favour given to such a proposal by the British in Lower Canada warrants the consideration of a suggestion unpalatable to Upper Canada. If union be the imperial project, it can only be accepted by ensuring British ascendancy in both branches of the legislature. Montreal ought to be annexed to Upper Canada. It is palpably unjust to leave that province without a port. Suggests the representation of the American colonies in the imperial parliament. Criticizes severely the colonial office and suggests a permanent board in London for colonial affairs with representatives from the colonies.

XCVIII. Durham to Glenelg, August 9, 1838 . . . . . 359

Discusses the racial animosities in Lower Canada; the attitude of the United States to the province; the sympathies of the Americans. Analyses the state of mind of the British in Lower Canada.

XCIX. The Indemnity Act (1 & 2 Victoria, c. 112), 1838 . . . 366

C. Baldwin to Durham, August 23, 1838 . . . . . 367

Encloses a copy of No. XCII and renews his plea for responsible government.

CI. Durham to Glenelg, October 16, 1838 . . . . . 369

His resignation. Considers possible effects of it.

CII. Durham to Glenelg, October 20, 1838 . . . . . 371

The British are angry at the wavering imperial policy. Sir John Colborne now supreme, as a military and not a civil government seems unfortunately to be the necessity of the future. Growing danger of separation from the mother country, at any rate of further bloodshed.

CIII Durham to Glenelg, November 10, 1838 . . . . . 374

Growing belief in Upper Canada in the indifference of the imperial government has produced unwillingness among the militia and volunteers to prepare for active service.

CIV. Report of the Committee of the Upper Canada Legislative Council on Durham's *Report*, May 11, 1839 . . . . . 374

Protests against Durham's suggestions for 'responsible government'. A colonial electorate too fickle, individualistic and unstable for such a trust, however suited to other conditions. The dangers are too great to throw off active imperial control. Durham is unreliable and inaccurate.

CV. Lord John Russell on Canadian Affairs, June, 1839 . . . 382

Various complexities and possible complications render impossible any grant of full responsible government to the Canadas.

CVI. Joseph Howe to Lord John Russell, September, 1839 . . . 384

This and the three following documents were addressed as open letters to Lord John Russell in reply to his speech of June, 1839 (No. CV). Howe agrees with Durham that the lack of 'responsible government' is the foundation cause of all the troubles in the colonies. Is the withholding of it due to a suspicion of colonial loyalty? That loyalty will bear full examination. Government by executive councils as absurd and unjust as it is futile. Efforts at reform only prove 'the cure worse than the disease'. No real remedy except Lord Durham's. The dangers? None in reality. The result? The people satisfied and happy. Does dependence in an empire imply a form of constitutional government different from that in England? If so, why, by what right, government by a minority? Will a majority be more 'disloyal' governing themselves than when under the irritation of minority rule? Is her majesty in mortal terror because the majority of the citizens of London govern the city? Does any one, except in a spirit of humour, imagine the lord mayor declaring war on France? Would we do it in Canada? Suppose we did, you could easily check us.

CVII. Joseph Howe to Lord John Russell, September, 1839 . . . 390

Examines Russell's objections to responsible government. 'The governors could, under it, be made responsible to the assembly, as the ministers of the crown in England are held responsible. They would be bound by the same limitations, and there would be neither more nor less invasion of the sovereignty of the crown. Suppose they receive unconstitutional advice from a colonial ministry—what then? May not this equally occur in England? The irresponsibility of governors at present is humorously but trenchantly analysed. Suppose a typical 'governor' made mayor of Liverpool, with all the present bag and baggage of 'instructions', 'dispatches', and all the present method of government as known in the colonies—'he must be an angel of light indeed, if he does not throw the good city of Liverpool into confusion'. What answer to the 'confusion'? The 'mayor' can blame someone else—can throw the responsibility on the 'colonial' office. 'No form of government could well be devised more ridiculous.' The 'mayor's' officials—the 'executive'— are *a fortiori* more irresponsible.

CVIII. Joseph Howe to Lord John Russell, September, 1839 . . . 398

The questions involved are those of local governemnt, not of imperial concern. Russell fears for foreign affairs. Let his own words be the answer to his fears: the governor must stand by his duty to allow no interference (cf. No. CV). A colony declare war? Only conceivable by irresponsible madmen. Russell's 'imaginary' cases only fertile creations which British North Americans laugh at. Discusses trade and commerce and shows that difficulties, if any, are as great under 'irresponsible' as 'responsible' government.

CIX. Joseph Howe to Lord John Russell, September, 1839 . . . 404

Russell may ask, and rightly ask, what is proposed as reform? Howe replies: he will leave to the imperial parliament foreign affairs; control of naval and military forces; the regulation of colonial trade with the mother country; that interference with the colonies similar to that with any incorporate town in England in extreme cases. Let the colonial secretary's duties be only 'watchful supervision'. Let him have no right to meddle in any internal affairs. Let the governors, who are usually on their arrival like ignorant, 'overgrown school boys', find themselves surrounded by 'schoolmasters' who have the confidence of the people, and not by those who only represent themselves, or a minority, or the whims of their excellencies' predecessors. The governors could then 'do no wrong in any matter of which the colonial legislature had the right to judge'. Discusses the details of reform by contrast with the evil ramifications of the old

system of government. Under 'responsible government' might not Papineau and Mackenzie have never existed as rebels; perhaps have developed into constructive statesmen?

CX. An Act Amending 1 & 2 Victoria, c. 9 (2 & 3 Victoria, c. 53), 1839 . 414

CXI. Lord John Russell to Poulett Thomson, September 7, 1839 . . 416

Thomson is sent to Canada to learn the deliberate wishes and to obtain the co-operation of the provinces, without which there can be no successful Canadian settlement. The government is strongly in favour of the proposed union, and Thomson will endeavour to obtain for its principles such an assent as will render them acceptable. Suggestions are given as to methods: he may appoint a committee of authority from each province to frame articles of union, to be proposed to the Upper Canadian legislature; he may assemble the latter and propose the appointment of commissioners to meet those from Lower Canada, and in the event of hostility in the assembly, he may dissolve it and appeal to the people. This step, however, must be taken with the gravest deliberation. Whatever the method, the government will expect to receive a detailed plan of union. If the proposal proves impracticable, an alternative is expected. 'Impossible to reduce into the form of a positive enactment a constitutional principle' of responsibility. 'It will be your anxious endeavour to call to your councils and to employ in the public service those persons, who by their position and character, have obtained the general confidence and esteem of the inhabitants of the province.' Military affairs, emigration and the land question require serious attention. Municipal institutions demand immediate and special consideration. In Upper Canada, finances and the clergy reserves are pressing questions. Her Majesty is determined to maintain the connexion between the United Kingdom and the American colonies.

CXII. Lord John Russell to Poulett Thomson, October 14, 1839 . . 421

Must refuse any explanation of 'responsible government' which would imply a surrender to the petitions and addresses. The imperial parliament has already expressed its opinion on the matter (No. XCIII). There can be no proposals entertained on the subject. Cabinet government impossible in a colony. Colonial councils cannot advise the crown of England. Impossible to reconcile the responsibility of the governor to the crown with a responsibility on his part to his council. Impossible also to define the power of the governor and the privileges of the assembly. The only rule is 'a wise moderation' by each.

CXIII. Lord John Russell to Poulett Thomson, October 16, 1839 . . 423

The tenure of subordinate colonial offices during the pleasure of the crown has generally come to mean a tenure during good behaviour. This must cease. Any sufficient motive of public policy or a change in the person of the governor will in future be sufficient reason for changes in officials. The judges are excepted. Pensions and indemnities may be necessary, but the rule must be enforced as often as the public good demands it.

CXIV. Poulett Thomson to Lord John Russell with the Address and Resolutions from the Lower Canadian Special Council in favour of Union, November 18, 1839 . . . . . 424

Special council of Lower Canada adopts plan for union. There is naturally much diversity of opinion owing to the rebellions, but almost every one sees the necessity for change.

CXV. Poulett Thomson to a Friend, November 20 and December 8, 1839. 427

Describes his successes, in favour of the union, in Lower Canada. Has fears for a similar result in Upper Canada—the country of factions, where the 'constitutional party is as bad or worse than the

other, in spite of all their professions of loyalty'. The finances, the house of assembly—in fact, everything in Upper Canada—in a chaotic state.

CXVI. Poulett Thomson to the Legislature of Upper Canada, December 7, 1839 . . . . . 428

Outlines the government's plans for union. Delay in proposal not due to wavering, but to a desire to consult the Upper Canadian legislature in order that the union may be as just as possible. Thomson asks the legislature to assent to certain terms in the proposed union: (*a*) equal representation for each province in the new united house of assembly, (*b*) the granting of a civil list, (*c*) the charging of the public debt of Upper Canada for works of a general nature on the joint revenue of the united province.

CXVII. Poulett Thomson to a Friend, December 12, 1839 . . . 430

Explains what he means by 'responsible government'. The governor cannot be responsible to an executive holding the confidence of the house of assembly. The governor is not a sovereign; he is a minister of the crown responsible to the home government, and therefore 'cannot be under the control of men in the colony'.

CXVIII. Resolutions of the Legislative Council of Upper Canada, December 14, 1839 . . . . . 431

Embody Thomson's requests as outlined in No. CXVI.

CXIX. Resolutions of the House of Assembly of Upper Canada, December 23, 1839 . . . . . 432

Embody Thomson's requests as outlined in No. CXVI.

CXX. Poulett Thomson to House of Assembly of Upper Canada, January 14, 1840 . . . . . 432

Impossible to lay before the house Russell's dispatches on 'responsible government'; quotes, however, No. CXI as to the advice on which he acts.

CXXI. The Act of Union (3 & 4 Victoria, c. 35), 1840 . . . . 433

CXXII. Poulett Thomson to Russell, September 16, 1840 . . . 445

Regrets that act of union has no provisions for municipal institutions. Municipal institutions are the very training needed in Canada—without them, higher government cannot succeed. Is inclined to defer proclaiming the union, until parliament has reconsidered this question. The consequences of such an action, however, too doubtful. If the queen desires, he will persist in his work and propose a comprehensive municipal scheme in the opening session of the new legislature.

CXXIII. Russell to Sydenham, October 25, 1840 . . . . . 449

Reply to No. CXXII. Regrets Sydenham's disappointment over the omission of legislative provision for local government in the act of union, especially as he shares in it. It is a Canadian matter, however, and the Canadian people will doubtless provide for such a useful system.

CXXIV. Sydenham to a Friend, 1840 (?) . . . . . 449

Expresses more emphatically his fear that it was a fatal mistake for the imperial parliament not to set up a good municipal system. Without it the jobbery and corruption of this government must go on, and the Canadian legislature spend its time inefficiently on petty local details. A system of local government far more important than even the legislative union.

## SIXTH PERIOD
## 1841–1867

Introductory Note to the Period . . . . . 453

CXXV. Sydenham's Speech to Canadian Legislature, 1841 . . . 455
Draws attention, *inter alia*, to the necessity for the development of the resources of the province by a well-considered plan of public works; to the need for encouraging and carefully controlling immigration; to the pressing call for a good system of municipal institutions and of provincial education. Promises imperial aid in substantial loans.

CXXVI. Sydenham to his Brother, August 28, 1841 . . . . . 457
Triumphant announcement of his having carried, word for word, his own municipal district bill for Upper Canada—'the bill, the whole bill, and nothing but the bill'.

CXXVII. Resolutions of the Legislative Assembly of Canada, 1841 . 457
Resolutions (generally assigned to Sydenham's pen) which were carried as amendments to proposals in which 'cabinet responsibility' in local matters was laid down. Sydenham's resolutions only go as far as the advice given him by Russell and communicated to the Assembly (see Nos. CXI and CXX).

CXXVIII. Stanley to Bagot, October 8, 1841 . . . . . 458
Stanley advises Bagot to introduce practical measures and to avoid theoretical discussions.

CXXIX. Bagot to Stanley, February 23, 1842 . . . . . 460
His early impression. Estimate of political groups.

CXXX. Bagot to Stanley, June 12, 1842 . . . . . 463
His duty to fuse discordant elements. Sydenham quarrelled with the French as a race. He hopes to begin a new era.

CXXXI. S. B. Harrison to Bagot, July 11, 1842 . . . . . 464
Advises Bagot to reconstruct executive by including French Canadians. An astute estimate of the political situation.

CXXXII. W. H. Draper to Bagot, July 16, 1842 . . . . . 468
Follows Harrison (No. CXXXI). 'You cannot get on without the French . . . I cannot sit with Mr. Baldwin.'

CXXXIII. Bagot to Stanley, July 28, 1842 . . . . . 469
A dispatch based on Nos. CXXXI and CXXXII. A critical view of the outlook. The government must be carried on either by 'a professed exclusion' and 'defiance' of the French Canadians or by their admission.

CXXXIV. Stanley to Bagot, September 1, 1842 . . . . . 472
Reply to No. CXXXIII. Is alarmed and has consulted Peel. 'Divide et impera.' Do not admit the French unless you make it manifest to Great Britain and the conservatives and to the supporters of Britain in the Canadas that you have been *forced* to do so.

CXXXV. Bagot to La Fontaine, September 13, 1842 . . . . . 473
The momentous move. La Fontaine is offered conditions.

CXXXVI. Bagot to Stanley, September 13, 1842 . . . . . 474
Official announcement of his action in No. CXXXV and the immediate results.

CXXXVII. Bagot to Stanley, September 26, 1842 . . . . . 475

A description of the success of his experiment. If approved asks for prompt sanction and firm support.

CXXXVIII. Bagot to Stanley, September 26, 1842 . . . . . 477

A private letter along the lines of No. CXXXVII. 'I found the Union was not completed. Sydenham had effected the *fiançailles*. The marriage as he very well knew must be the work of his successor.' I have found the moment opportune 'for performing that ceremony'.

CXXXIX. Bagot to Stanley, September 26, 1842 . . . . . 478

A graphic criticism of Sydenham's methods and of the dramatic scenes in his own legislature. Asks for full approval.

CXL. Stanley to Bagot, November 2, 1842 . . . . . 483

The official dispatch. Critical and unkindly but promises 'cordial support'.

CXLI. Stanley to Bagot, November 3, 1842 . . . . . 486

Critical and coloured by prejudice. 'We do not disapprove your policy. We are prepared to support it and defend you for having pursued it', but we shall rest both on the fact that circumstances forced you to act.

CXLII. Metcalfe to Stanley, August 5, 1843 . . . . . 489

Fails to understand Sydenham's system of government, but, as it is apparently working out, it will mean cabinet and party government. Can this be reconciled with the position of the governor in a colony? He fails to see how the problem can be solved, but fears that it is too late to withdraw the system which has been set up as a deduction from Sydenham's plan. Whether it was his own or not, he cannot say. For himself, he finds it impossible to submit to the dictates of 'party government' in a dependency of the crown.

CXLIII. Earl Grey to Lieut.-Gov. Harvey, November 3, 1846 . . 494

Outlines the status of the legislative and executive councils. Appointments to the former should be made to make it 'fairly represent the opinion of the majority of the intelligent members of the community'. If, however, it does not harmonize, what course is open? Two considerations are clear: first, the legislative council cannot be allowed permanently to obstruct measures called for by public opinion and sent up by the assembly; secondly, that it is a grave evil to appoint new members to the council in order to carry such measures, as such a method may involve too wide possibilities of increase in future difficulties of a similar nature. How can the problem be solved? It is to be understood that only 'clear and obvious necessity'—'practical inconvenience must have actually arisen and to a serious extent'—will justify the appointment of additional members. Such urgent necessity will not excite indignation, and it is likely that the council will yield to circumstances demanded by popular opinion and prevent the adoption of such a drastic measure. With regard to the executive council, when they cannot govern, application must be made to the opposite party. The governor must make it clear that while he can never assent to the abuse of the royal authority for party as opposed to public objects, he is willing to work with any party that can command public confidence, as the government of the British provinces cannot be carried on 'in opposition to the opinion of the inhabitants'.

CXLIV. Earl Grey to Lieut.-Gov. Harvey, March 31, 1847 . . . 496

Outlines the British system of government and points out the difference between 'political' and 'official' appointments. He sees no reason —but rather welcomes the idea—why colonial government should not follow the British system. A careful criticism is given of the possibilities of carrying it into effect, but it is pointed out that few appoint-

ments at present should be of a 'political' nature, involving changes with the change of public opinion, and that the vast number of smaller appointments should be of an official kind, 'during good behaviour'; thus the danger of dislocation in administration will be lessened—a danger not to be minimized in a small community which has just gained 'responsible government'. Outlines a scheme for the 'political' appointments, and also lays it down that 'permanent officials' must not be members of either house of the legislature. 'Political' appointments will carry with them seats in the executive council. With these considerations in mind, 'that system of parliamentary government which has long prevailed in the mother country' can be immediately adopted.

CXLV. Elgin to Earl Grey, July 13, 1847 . . . . . 500

Outlines his conception of the position of the governor under the newly introduced system of responsible cabinet government: frank and unreserved constitutional support to his ministers, but never concealing from them that nothing will prevent him from working cordially with their opponents, if forced upon him.

CXLVI. Elgin to Lady Elgin, 1847 . . . . . 501

Lord Durham's vindication will be the fair working out of his system of government in Canada.

CXLVII. Elgin to Earl Grey, April 30, 1849 . . . . . 501

A detailed account of the riots at Montreal and the public excitement following on Elgin's signing the rebellion losses' bill. Elgin defends his action as entirely constitutional and exposes the shallowness of the claims made by a 'British' minority to be the sole loyalists in the province.

CXLVIII. The Annexation Manifesto, 1849 . . . . . 505

Annexation to the United States is the only cure for the political and economic evils.

CXLIX. Elgin to Earl Grey, March 23, 1850 . . . . . 509

Criticizes Russell's speech of February 8, 1850, in which he anticipated colonial independence. Pleads for a nobler conception of the colonies. 'You must allow them to believe that, without severing the bonds which unite them to Great Britain, they may attain the degree of perfection and of social and political development to which organized communities of freemen have a right to aspire.' Russell's opinion will only add support to the annexationists; will grieve the loyal and well affected such as Baldwin, and will hurt the province financially and economically.

CL. Elgin to Earl Grey, November 1, 1850 . . . . . 511

Contrasts American and British forms of government.

CLI. Elgin to Earl Grey, December 17, 1850 . . . . . 512

An expansion of the ideas which run through No. CL. A defence of limited monarchy against republicanism.

CLII. Elgin to Cumming Bruce, September, 1852 . . . . . 514

Responsible cabinet government can flourish in the dominions. 'This faith I have imparted.' The dependencies cannot be governed 'on the antiquated bureaucratic principle, by means of rescripts from Downing street'. 'I have always said to my advisers, "While you continue my advisers, you shall enjoy my unreserved confidence, and *en revanche* you shall be responsible for all acts of government."'

CLIII. Elgin to the Duke of Newcastle, February 18, 1853 . . . 514

The prerogative of the crown should be employed as a means of attaching the outlying parts of the empire to the throne. Imperial honours should emanate directly from the crown, not on the recom-

mendation of the local executives, and they should only be bestowed on 'eminent persons who are no longer actively engaged in political life'.

CLIV. Elgin to the Duke of Newcastle, March 26, 1853 . . . 515
To the argument that, by a severance of the connexion, British statesmen will be relieved of an onerous responsibility for colonial acts of which they cannot otherwise rid themselves, Elgin replies that the true answer is to throw 'the whole weight of responsibility on those who exercise the real power'.

CLV. Elgin to Sir George Grey, December 18, 1854 . . . . 515
Outlines his conception of the functions of a governor.

CLVI. The Clergy Reserves Act (18 Victoria c. 2, Canadian), 1854 . . 516

CLVII. The Seigniorial Tenures Act (18 Victoria c. 3, Canadian), 1854 . 519

CLVIII. The Union Act Amendment Act (11 & 12 Victoria, c. 56), 1848 . 532
Repeals section 41 of the Act of Union (No. CXXI), which provided for the sole use of *English* as the official language.

CLIX. The Union Act Amendment Act (17 & 18 Victoria, c. 118), 1854 . 533
Gives legislature of Canada power to alter the constitution of the legislative council and repeals sections 26 and 42 of the Act of Union (No. CXXI).

CLX. The Union Act Amendment Act (22 & 23 Victoria, c. 10), 1856 . 534
Gives legislature of Canada power to make laws regulating the appointment of a speaker of the legislative council.

CLXI. Galt's Resolutions on Federation, 1858 . . . . . 535

CLXII. Galt &c. to Lytton, October 23, 1858 . . . . . 536
On federation negotiations.

CLXIII. Same to Same, October 25, 1858 . . . . . 537
Confidential communication on federation.

CLXIV. Lytton to Head, November 26, 1858 . . . . . 538
Colonial secretary's views to governor of Canada on federation.

CLXV. Galt on the Canadian Tariff, 1859 . . . . . 539
A vindication of Canadian fiscal autonomy.

CLXVI. Colonial Habeas Corpus Act (25 & 26 Victoria, c. 20), 1862 . 540
Writ of Habeas Corpus not to issue into any colony or foreign dependency of the crown having courts authorized to grant the same.

CLXVII. Negotiations for Federation, 1864 . . . . . 540
Political agreement between Macdonald and Brown.

CLXVIII. The Quebec Resolutions, 1864 . . . . . 541
The seventy-two resolutions of the Quebec Conference.

CLXIX. Cardwell to Monck, December 3, 1864 . . . . . 547
From the colonial secretary acknowledging receipt of No. CLXVIII.

CLXX. Colonial Laws Validity Act (28 & 29 Victoria, c. 63), 1865 . . 549
An Act to remove doubts as to the validity of colonial laws. A colonial law cannot be repugnant to the laws of England: the meaning of 'repugnancy' is embodied in this act.

CLXXI. Debates in the Canadian Parliament on Confederation, 1865 . 550

CLXXII. The Westminster Palace Hotel Resolutions, 1866 . . . 611

CLXXIII. British North America Act (30 & 31 Victoria, c. 3), 1867 . 617

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CLXXV. The Manitoba Act (33 Victoria, c. 3, Dominion Statute), 1870 . 640

CLXXVI. Admission of Rupert's Land and North-Western Territory into the Union, June 23, 1870 . . . . . 644

CLXXVII. Admission of British Columbia into the Union, May 16, 1871 658

CLXXVIII. The British North America Act (34 & 35 Victoria, c. 28), 1871 663

Parliament of Canada may establish new provinces and provide for the constitution thereof; may alter the limits of provinces, with the consent of their legislatures; may legislate for any territory not included in a province. Limits power of Canadian parliament to legislate for an established province. Confirms acts of the Canadian parliament for the temporary government of Rupert's Land and North-Western Territory (No. CLXXIV and No. CLXXV).

CLXXIX. Admission of Prince Edward Island into the Union, June 26, 1873 . . . . . 664

CLXXX. Parliament of Canada Act (38 & 39 Victoria, c. 38), 1875 . . 668

Repeals Section 18 of B. N. A. Act, 1867 (No. CLXXIII), with regard to the privileges of the Canadian parliament, provides a new section defining those privileges, &c.

CLXXXI. Edward Blake on the Office of Governor-General, 1876 . . 669

CLXXXII. Edward Blake on the Prerogative of Mercy, 1876 . . 670

CLXXXIII. Letters Patent Constituting the Office of Governor-General of the Dominion of Canada, 1878 . . . . . 672

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On the appointment of a Canadian representative in London.

CLXXXVI. Lorne to Hicks Beach, December 24, 1875 . . . . 678

Canadian reply to No. CLXXXV.

CLXXXVII. The British North America Act (49 & 50 Victoria, c. 35), 1886 . . . . . 680

Parliament of Canada may provide for parliamentary representation for any territories which form part of the Dominion, but are not included in any of its provinces.

CLXXXVIII. Ripon to Governor-General, June 28, 1895 . . . 680

On treaty-making power.

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On treaty-making procedure.

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# FIRST PERIOD
## 1713–1758

# FIRST PERIOD

## 1713–1758

The documents included here illustrate the territorial and other arrangements under the treaty of Utrecht and the beginnings of self-government in what is now British North America.

For a carefully documented study see Chester Martin, *Empire and Commonwealth*, pp. 56 ff. (Oxford, 1929).

I

## TREATY OF UTRECHT, 1713

*Treaty of Peace and Friendship between the most serene and most potent Princess Anne, by the grace of God, Queen of Great Britain, France, and Ireland, and the most serene and most potent Prince Lewis XIV, the most Christian King, concluded at Utrecht the* 31/11 *day of March/April* 1713.

. . . . . .

X. The said most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right for ever, the bay and streights of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said bay, and streights, and which belong thereunto, no tracts of land or of sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made, in the condition they now are, and likewise all fortresses there erected, either before or since the French seized the same, shall within six months from the ratification of the present treaty, or sooner, if possible, be well and truly delivered to the British subjects, having commission from the Queen of Great Britain to demand and receive the same, entire and undemolished, together with all the cannon and cannon-ball which are therein, as also with a quantity of powder, if it be there found, in proportion to the cannon ball, and with the other provision of war usually belonging to cannon. It is, however, provided that it may be entirely free for the company of Quebec, and all other the subjects of the most Christian King whatsoever, to go by land, or by sea, whithersoever they please out of lands of the said bay, together with all their goods, merchandizes, arms, and effects, of what nature or condition soever, except such things as are above reserved in this article. But it is agreed on both sides, to determine within a year, by commissaries to be forthwith named by each party, the limits [1] which are to be fixed between the said Bay of Hudson, and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land. The same commissaries shall also have orders to describe and settle, in like manner, the boundaries between the other British and French colonies in those parts.

XI. The abovementioned most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods, by the hostile incursions and depradations of the French, in time of peace, an estimate being made thereof by commissaries to be named at the requisition of each party. The same commissaries shall moreover inquire as well into the complaints of the British subjects concerning ships taken by the French in time of peace, as also concerning the damages sustained last year in the island called Montserat, and others, as into those things of which the French subjects complain, relating to the capitulation in the island of Nevis, and castle of Gambia, also to French ships, if perchance any such have been taken by British subjects in time of peace. And in like manner into all disputes of this kind, which shall be found to have arisen between both nations, and which are not yet ended; and due justice shall be done on both sides without delay.

XII. The most Christian King shall take care to have delivered to the Queen of Great Britain, on the same day that the ratifications of this treaty shall be exchanged, solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the island of St. Christophers is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadia, with its ancient boundaries, as also the city of Port Royal, now called Annapolis Royal, and all other things in those parts, which depend on the said lands and islands, together with the dominion, propriety, and possession of the said islands, lands, and places, and all right whatsoever, by treaties, or by any other way obtained, which the most

[1] For the boundaries see Mills, D., *A Report on the Boundaries of Ontario* (Toronto, 1873), *Ontario Sessional Papers*, vol. xi, No. 31; Canada, *House of Commons Debates*, 1889, pp. 1654 ff.; 52 and 53 Victoria, c. 28 (Imperial Act).

Christian King, the crown of France, or any the subjects thereof, have hitherto had to the said islands, lands, and places, and the inhabitants of the same, are yielded and made over to the Queen of Great Britain, and to her crown for ever, as the most Christian King does at present yield and make over all the particulars abovesaid; and that in such ample manner and form, that the subjects of the most Christian King shall hereafter be excluded from all kind of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia, that is to say, on those which lie towards the East, within 30 leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the South west.

XIII. The island called Newfoundland, with the adjacent islands, shall from this time forward, belong of right wholly to Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island, are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner if possible, by the most Christian King, to those who have a commission from the Queen of Great Britain, for that purpose. Nor shall the most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right of the said island and islands, or to any part of it, or them. Moreover, it shall not be lawful for the subjects of France, to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for the drying of fish; or to resort to the said island, beyond the time necessary for fishing, and drying of fish. But it shall be allowed to subjects of France, to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called cape Bonavista, to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence, and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place, or places there.

XIV. It is expressly provided, that in all the said places and colonies to be yielded and restored by the most Christian King, in pursuance of this treaty, the subjects of the said King may have liberty to remove themselves within a year to any other place, as they shall think fit, together with all their moveable effects. But those who are willing to remain there, and to be subject to the kingdom of Great Britain, are to enjoy the free exercise of their religion, according to the usage of the church of Rome, as far as the laws of Great Britain do allow the same.

. . . . . .

XXX. In witness whereof, we the underwritten Ambassadors Extraordinary and Plenipotentiaries of the Queen of Great Britain, and of the most Christian King, have put our seals to these present instruments, subscribed with our own hands, at Utrecht the 31/11th day of March/April in the year 1713.

*Joh. Bristol*, C. P. S. *Huxelles*,
*Strafford.* *Mesnager.*

## II

## COMMISSION TO CORNWALLIS, MAY 6, 1749

George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our trusty and well-beloved, the Honorable Edward Cornwallis, Esquire, Greeting. . . .

. . . . . .

. . . know you that we reposing special trust and confidence in the prudence, courage, and loyalty of you, the said Edward Cornwallis, of our special grace, certain knowledge and meer motion, have thought fit to constitute and appoint you, the said Edward Cornwallis, to be our Captain General, & Governor in Chief in and over our Province of Nova Scotia or Acadie in America, with all the rights, members, and appurtenances whatsoever thereunto belonging, and we do hereby require and command you to do and execute all things in due manner that shall

belong unto your said command and the trust we have reposed in you according to the several powers and authorities granted or appointed you by this present Commission and the instructions herewith given you, or by such further powers, instructions and authorities as shall at any time hereafter be granted or appointed you under our signet and sign manuel, or by our order in our privy Council, and according to such reasonable laws and statutes as hereafter shall be made or agreed upon by you with the advice and consent of our Council and the Assembly of our said Province, under your government hereafter to be appointed in such manner and form as is hereafter expressed.

And for the better administration of justice, and the management of the public affairs of our said Province, we hereby give and grant unto you, the said Edward Cornwallis, full power and authority to chuse, nominate, and appoint such fitting and discreet persons as you shall either find there or carry along with you not exceeding the number of Twelve, to be of our Council in our said Province. As also to nominate and appoint by warrant under your hand and seal all such other officers and ministers as you shall judge proper and necessary for our service and the good of the people whom we shall settle in our said Province until our further will and pleasure shall be known.

. . . . . .

And we do hereby give & grant unto you full power and authority to suspend any of the members of our said Council to be appointed by you as aforesaid from sitting, voting, and assisting therein if you shall find just cause for so doing.

And if it shall at any time happen that by the death, departure out of our said Province, suspension of any of our said Councilors, or otherwise, there shall be a vacancy in our Council (any five whereof we do hereby appoint to be a quorum), our will and pleasure is that you signify the same unto us by the first opportunity that we may under our signet & sign manuel constitute and appoint others in their stead.

But that our affairs at that distance may not suffer for want of a due number of Councilors, if ever it shall happen that there shall be less than nine of them residing in our said Province, we hereby give and grant unto you the said Edward Cornwallis full power and authority to chuse as many persons out of the principal freeholders inhabitants thereof as will make up the full number of our said Council to be nine and no more; which persons so chosen and appointed by you shall be to all intents and purposes Councilors in our said Province until either they shall be confirmed by us, or that by the nomination of others by us under our sign manuel or signet our said Council shall have nine or more persons in it.

And we do hereby give and grant unto you full power & authority, with the advice and consent of our said Council, from time to time as need shall require, to summon and call General Assemblys of the Freeholders and Planters within your Government according to the usage of the rest of our Colonies & Plantations in America.

And our will and pleasure is that the persons thereupon duly elected by the major part of the Freeholders of the respective counties and places & so returned shall before their sitting take the Oaths mentioned in the Act entitled "An Act for the further security of his Majesty's Person and Government and the succession of the Crown in the Heirs of the late Princess Sophia being Protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors," as also make and subscribe the afore-mentioned declaration (which Oaths & Declaration you shall commissionate fit persons under our Seal of Nova Scotia to tender and administer unto them,) and until the same shall be so taken and subscribed no person shall be capable of sitting tho' elected, and we do hereby declare that the persons so elected and qualified shall be called and deemed the General Assembly of that our Province of Nova Scotia.

And that you the said Edward Cornwallis with the advice and consent of our said Council and Assembly, or the major part of them respectively, shall have full power and authority to make, constitute, and ordain Laws, Statutes, & Ordinances for the Public peace, welfare & good government of our said province and of the people and inhabitants thereof and such others as shall resort thereto, & for the benefit of us, our heirs and successors, which said Laws, Statutes, and Ordinances are not to be repugnant, but as near as may be agreeable, to the Laws and Statutes of this our Kingdom of Great Britain.

Provyded that all such Laws, Statutes & Ordinances, of what nature or duration so ever be within three months or sooner after the making thereof trans-

mitted to us under our Seal of Nova Scotia for our approbation or disallowance thereof, as also duplicates by the next conveyance.

And in case any or all of the said Laws, Statutes & Ordinances not before confirmed by us shall at any time be disallowed, and not approved & so signified by us our Heirs or Successors under our or their sign manuel & signet, or by order of our or their privy Council unto the said Edward Cornwallis, or to the Commander in Chief of our said Province for the time being, then such and so many of the said Laws, Statutes, and Ordinances as shall be so disallowed & not approved shall thenceforth cease, determine, & become utterly void & of none effect, anything to the contrary thereof notwithstanding.

And to the end that nothing may be passed or done by our said Council or Assembly to the prejudice of us our Heirs & Successors, we will & ordain that you the said Edward Cornwallis shall have and enjoy a negative voice in the making and passing of all Laws, Statutes & Ordinances as aforesaid.

And you shall & may likewise from time to time, as you shall judge it necessary, adjourn, prorogue & dissolve all General Assemblies as aforesaid.

And our further will and pleasure is that you shall and may keep & use the Publick Seal of our Province of Nova Scotia for sealing all things whatsoever that pass the Great Seal of our said Province under your Government.

And we do further give and grant unto you the said Edward Cornwallis full power and authority from time to time & at any time hereafter, by yourself or by any other to be authorized by you in that behalf, to administer and give the Oaths mentioned in the aforesaid Act to all and every such person or persons as you shall think fit, who shall at any time or times pass into our said Province or shall be residing or abiding there.

And we do by these presents give and grant unto you the said Edward Cornwallis full power and authority, with advice and consent of our said Council, to erect, constitute, and establish such and so many Courts of Judicature & Publick Justice within our said Province and Dominion as you and they shall think fit and necessary for the hearing & determining all causes as well Criminal as Civil according to Law and Equity, and for awarding of Execution thereupon with all reasonable and necessary powers, authorities, fees & privileges belonging thereunto, as also to appoint & commissionate fit persons in the several parts of your Government to administer the oaths mentioned in the aforesaid Act, entitled "An Act for the further security of His Majesty's Person & Government & the Succession of the Crown in the Heirs of the late Princess Sophia being Protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors:" as also to administer the aforesaid declaration unto such persons belonging to the said Courts as shall be obliged to take the same.

And we do hereby authorise and impower you to constitute and appoint Judges, & in cases requisite Commissioners of Oyer & Terminer, Justices of the Peace, and other necessary officers & ministers in our said Province for the better administration of Justice and putting the Laws in execution, and to administer or cause to be administered unto them such oath or oaths as are usually given for the due execution and performance of offices and places and for the clearing of truth in Judicial Causes.

And we do hereby give and grant unto you full power & authority, where you shall see cause, or shall judge any offender or offenders in criminal matters or for any fines or forfeitures due unto us fit objects of our mercy, to pardon all such offenders and to remit all such offences, fines and forfeitures, treason & willfull murder only excepted; in which cases you shall likewise have power upon extraordinary occasions to grant reprieves to the offenders untill & to the intent our Royal pleasure may be known therein.

We do by these presents authorise and empower you to collate any person or persons to any churches, chapels, or other eccleciastical benefices within our said Province as often as any of them shall happen to be void.

. . . . . .

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster the sixth day of May in the twenty-second year of our reign.

By writ of Privy Seal.

(Signed) YORKE & YORKE.

## III

## REPRESENTATIVE GOVERNMENT IN NOVA SCOTIA, 1755

[Trans.: Akins, *Nova Scotia Archives* (1869), pp. 710 ff.]

*To the Right Honble. the Lords Commissioners for Trade and Plantations.*

May it Please Your Lordships,—

Pursuant to your Lordships' desire Signified to Us by Mr. Hill in his Letter of the 31st of March last setting forth, That a doubt having arisen whether the Governor and Council of His Majesty's Province of Nova Scotia have a Power of enacting Laws within the said Province and Jonathan Belcher Esqr. having transmitted to Your Lordships his observations thereupon inclosing to Us a Copy of the said Observations together with Copys of several clauses in the Commission[1] and Instructions of the said Governor of that Province referred to (all which are herewith returned) and desiring our opinion, whether the said Governor and Council have or have not a Power to enact Laws for the public Peace, Welfare and good Government of the said Province and the People and the Inhabitants thereof.

We have taken the said Observations and clauses into Our Consideration and are humbly of opinion that the Governor and Council alone are not authorized by His Majesty to make Laws till there can be an Assembly.

His Majesty has ordered the Government of the Infant Colony to be pursuant to his Commission and Instructions and such further Directions as He should give under his Sign Manual or by Order of Council.

All of which is humbly submitted to Your Lordships Consideration.

(Signed) Wm. Murray.
Richd. Lloyd.

April 29th, 1755.

*Governor Lawrence to Lords of Trade and Plantations.*

Halifax, 8th December, 1755.

My Lords,—

I have the honour by this opportunity to transmit to your Lordships the opinion of the Chief Justice[2] upon the manner of convening an Assembly in this Province. Tho' this is a matter, that in many of its parts, I am by no means qualified to judge of, yet I think it my duty to lay before your Lordships such reflections as have occurred to me upon so important a subject.

The general necessity of convening an assembly upon account of the present invalidity of the laws, being altogether a point of law, I can say no more upon that head than that the Laws are chiefly such, as it appeared indispensably necessary to make, for the good regulation of the Town of Halifax and the encouragement of its commerce, they were mostly made at the request of the Merchants, or the people whom they concerned, who have been perfectly satisfied therewith and have never made the least question of their validity that ever I heard, I have been well informed that at the first establishment of the Colony of Virginia, Laws were enacted in the same manner and continued in force until an Assembly could be easily convened for their confirmation.

The enclosed opinion seems to be founded upon the necessity of performing a promise made to the first Settlers of their having an Assembly. I believe from the first settlement of the Province to the present time the Governor has been required by the 86th Instruction to call an Assembly, by causing two Members to be elected for each Township, but as the Town of Halifax is the only place qualified to elect two members, they alone would not be sufficient to form an Assembly, therefore I humbly apprehend such a promise, cannot in any wise be said to have been broke through, but its performance not yet become possible, by the circumstances of the Province. As to the manner proposed by the Chief Justice for convening an Assembly at present, by electing 12 Members for the Province in the form of a County Election if it is to be any precedent for future elections, it will be attended with a very great inconvenience. As it is to be held

[1] See No. II. Jonathan Belcher.

at Halifax, which most likely will not be the residence of the landed people, but of the Merchants, the former whose well being is much more connected with the security of the Province, will be mostly excluded and the Assembly chiefly composed of the latter, who are not so nearly concerned in its welfare, and who may sometimes have views & interests incompatible with the measures it may be necessary to take in a Province so contiguous both by land and water, to the whole force of the French in North America.

I have now laid before you fully my thought upon this subject, which I flatter myself, your Lordships will receive with your usual candour, and excuse any error that may be found therein, upon reflecting how seldom it has fallen in my way to consider things of this nature.

If it is thought necessary to put this Plan or any other to the same purpose in execution, I beg of your Lordships that I may have full instructions upon the subject, which I will take care most punctually to execute. It would be necessary, in this case, to provide for the expense of a House for the Assembly to sit in, and for a Clerk and such salaried Officers as may be thought necessary for their attendance, for I can venture to assure your Lordships that the people here in general, are not in a condition of contributing any sum of money to defray such an expense.

I am, &c.

CHAS. LAWRENCE.

The Lords Commrs. for Trade & Plantations.

*Extract from Letter of Lords of Trade to Governor Lawrence.*

Whitehall, March 25th, 1756.

We have taken into Our Consideration your Letter to us dated the 8th of December last, inclosing the Proposals of the Chief Justice for convening an Assembly in Nova Scotia, and although We are fully sensible of the numberless Difficulties which will arise in carrying this or any other plan for an Assembly into Execution in the present state of the province and that many of the Inconveniences pointed out in your Letter must necessarily attend it, yet We cannot but be of Opinion, that the want of a proper authority in the Governor and Council to enact such Laws as must be absolutely necessary in the Administration of Civil Government, is an Inconvenience and Evil still greater than all these; and altho' His Majesty's subjects may have hitherto acquiesced in and submitted to the Ordinances of the Governor and Council, yet we can by no means think, that that or any other reason can justify the continuance of the Exercise of an illegal authority; what you say with regard to the Council of Virginia's passing laws in the first Infancy of that Colony is very true; but then they derived the Power of doing it from their Commission, which was also the case of many other of the Colonies at their first settlement, tho' it was a Power of very short Duration, and in later times since the Constitution of this Country has been restored to its true principles has never been thought advisable to be executed.

Whether the measure proposed by the Chief Justice is or is not a proper one depends upon a precise knowledge of a variety of Facts which we at this distance cannot be competent Judges of; but whether that or any other plan is followed it will only be a temporary Plan and in no degree a precedent for future Assemblys when the circumstances of the Province will admit of other Regulations.

The first Assembly Convened be it in what form it will, must necessarily consist of Persons of Property in Trade, because there is no Person who can be truly said to have any considerable landed Interest, until the Country is cleared and the Lands laid out, yet it may be proper and it will be necessary to take care, that a certain landed property, be it ever so small, be the Qualification as well of the Electors as the Elected, because the Commission directs that the Assembly shall be chosen by the majority of the Freeholders.

The Election of twelve Persons or of any greater or lesser number to represent the whole Province considered as one County, may be a proper method as far as appears to us, but this must be left to your Discretion, who, by being upon the spot will be better able to determine upon this point, perhaps a Division of the Province into Districts or Townships may be the more eligible method, for altho' Halifax is at present the only Town in which there are any Inhabitants qualified to be Electors or Elected, yet as it is not proposed that actual Residence should

be required in order to qualify a Person to act in either one or other of the Capacitys, the making a few Grants of Land in any of the Districts, as Minas, Chignecto, Piziquid, Cobequid &c. will remove this difficulty, and if this can be done, the first Assembly will bear the nearer Resemblance to the form, in which it must be convened when the Province becomes better peopled and settled.

This however We only throw out for your Consideration and desire it may be understood, that this point is left to your discretion under the Powers given you by your Commission.

This being settled, The next Consideration will be the form of the Writ of Summons, the manner of executing it and the previous points to be settled before the Assembly proceeds upon Business, so far as regards the Election of a Speaker and the Rules to be observed with respect to Dissolutions, Prorogations and Adjournments: as to all which Points, We must refer you to the inclosed Copy of the form of a Writ made use of in the Province of New Hampshire, which appears to us (regard being had to the different circumstances of the two Provinces) the best adapted to the purpose, and to the inclosed Copies of the Instructions lately given to the Governor of Georgia and to the members of the Council of that Province, showing the manner in which these Instructions were carried into execution.

There is one part of the Chief Justices proposal however which we can by no means approve of, and which must be particularly guarded against, and that is the continuance of the first Assembly for 3 years which might be and probably would be attended with great inconveniences, for, altho' We have no doubt but that the first Assembly will be constituted of proper Persons and Persons well disposed to promote the Public Service, yet it may happen either from some Defect in the first formation of the Assembly or from their irregular and improper Proceedings, that the Governor may find it necessary for the good of the service to dissolve them and as it would be highly improper that his hands should, in such case be tied up, We thought it necessary to say thus much upon this Point, as it appears to us of great consequence.

Another inconvenience necessary to be guarded against is long Sessions, which will not only be attended with Expence, but will also, in the present situation of affairs greatly obstruct and hinder you in the necessary attention which you must give to other important matters; and therefore you will take care, that the Sessions be as short as possible and the meetings at such times as shall be most convenient as well to the members as to yourself.

These are all the Points which occur to us at present upon this important question, and it only remains for us to desire that you will take the earliest opportunity after the first Session of the Assembly to acquaint us in the fullest and most particular manner of all the steps you have taken in this matter, of the effect and operation of this measure with regard to the Public Service, pointing out to us at the same time the Conveniences and Inconveniences of it, how far the Plan on which you proceeded is defective, the cause of those Defects, and in what manner you would propose to have them remedyed to the end that we may lay the whole matter before His Majesty and the Plan for future Assemblys ascertained by proper Instructions to you.

*Extract from letter of Lords of Trade to Governor Lawrence.*

Whitehall, July ye 8th, 1756.

We have in our Letter to you dated the 25th of March last, given you our Sentiments at large upon the Propriety and method of Summoning an Assembly, and as We are fully convinced of the expediency of this measure and are satisfied that until it be done, this Infant Colony cannot be truly said to be upon a permanent and lasting Establishment. We hope you will have thoroughly considered this matter and carried our directions into Execution. We have no doubt but that all His Majesty's Subjects in Nova Scotia enjoy their Rights and Libertys to the full extent under the present form of Government, but until an Assembly is established, malevolent and ill designing men will take occasion to complain and misrepresent things to the prejudice of the Colony, and even the best disposed of His Majesty's Subjects there, will be uneasy under the present form of Government, a Petition setting forth the Inconveniency resulting from the want of an Assembly, having already been transmitted.

*Extract from a letter of Gov. Lawrence to the Lords of Trade and Plantations.*

Halifax, 3rd November, 1756.

In my letter to your Lordships of the 14th of October last, which was forwarded by way of Boston, I had the honor to acquaint you of my intentions to wait on my Lord Loudoun at New York, and that upon my return, the business of a house of representatives recommended by your Lordships, which from the absence of the Chief Justice upon the Continent for some time past, could not be sooner attended to, should be set about with all convenient diligence. But since the receipt of your Lordships last letter, and of one from the Secretary of State, I have laid aside my design of visiting my Lord Loudoun at least for the present, and as the Chief Justice is now arrived, I shall as soon as the business of the Supreme Court, in which he is now deeply engaged is over, proceed to the consideration of what your Lordships have proposed in that respect, and in the mean time I take the liberty to enclose to your Lordships some remarks upon the expediency of this measure, pointing out the different objections & the difficulties we at present labour under in order to pave the way for carrying it into execution & which your Lordships look upon as so essentially necessary to the permanent and lasting establishment of this Infant Colony, which remarks when your Lordships shall have maturely considered, I flatter myself you will agree with me in opinion that in our present critical situation it will be no easy matter to obviate the many difficulties which naturally arise in the making such alterations in the present form of Government as your Lordships have now proposed. I can with great truth assure your Lordships that I know not of one instance wherein his Majesty's subjects in Nova Scotia have been in the least molested in the enjoyment of their rights and liberties to the full extent, under the present form of Government and that since I have had the honor to be entrusted with the management of the Province affairs, I have done my utmost endeavours to give satisfaction to every person in it. But my Lords it is impossible for me to redress pretended grievances that I have never been informed of nor can I indeed conjecture what reasons could be given to your Lordships by those Petitioners to induce you to think they labor under such great inconveniences from the want of an Assembly. This much I certainly know, that those very persons who were so forward in pushing this matter during Mr. Cornwallis's Government seem now to be entirely of opinion that a House of Representatives in the present posture of affairs instead of obviating the inconveniences complained of would serve only to create heats, animosities and disunions amongst the people at a time when the enemy is as I may say at our doors, and when the whole should join together as one man for their mutual safety and defence. That there are malevolent and ill designing men who will take occasion to misrepresent things to the prejudice of the Colony and that there are some such in this place I have some reason to conclude. These my Lords will be always the same under any Government, not from any particular regard for their Country, or to the advantage and prosperity of the Colony but from views and motives of a very different and perhaps not so disinterested a nature. But that the well disposed part of His Majesty's subjects here should be in the least uneasy under the present form of Government, I have not the least reason to surmise, because they have never signified any thing of it to me; and I dare say, if any of them have joined in the Petition your Lordships make mention of, they have been led into it through inadvertency and the specious pretences of the persons I have been just describing. But whatever might be their inducement at that time I have the most just grounds to be satisfied that they are now of a quite different way of thinking.

At a Council holden at the Governers House in Halifax on Friday the 3d Decr. 1756,

PRESENT—

His Excellency the Governor,
The Lieutenant Governor,
Benj. Green
Jno. Collier
Robt. Grant
Chas. Morris
} Councs.

Jonathan Belcher Esqr. took the Oaths as a Member of His Majesty's Council of this Province, and his Seat at the Board. Proposals which Mr. Chief Justice Belcher had laid before him the last Year for Calling a House of Representatives, and which he had at that time transmitted to their Lordships of the Board of Trade for their consideration. His Excellency also communicated Extracts from two letters which he had received from their Lordships on that head, wherein they had directed him to take such measures as he should think most proper for calling such a House, wherefore he desired the Council would give him their opinion and advice thereon.

The Council then proceeded to consider what measures would be most proper to be taken for convening the Assembly, but not coming to any resolution thereon, they adjourned the further consideration thereof to Monday next at Ten of the Clock in the forenoon.

Jno. Duport, Sec. Conc.

Chas. Lawrence.

At a Council holden at the Governors House in Halifax on Monday the 3rd Jany. 1757.

Present—

The Lieutenant Governor.

Jonn. Belcher, Jno. Collier, Chas. Morris, } Councs. { Benj. Green, Robt. Grant.

His Excellency the Governor together with His Majestys Council having had under mature consideration the necessary and most expedient measures for carrying into Execution those parts of His Majesty's Commission and Instructions which relate to the calling General Assembles within the Province, came to the following Resolutions thereon, viz.

That a House of Representatives of the inhabitants of this Province, be the Civil Legislature thereof, in Conjunction with His Majesty's Governor or Commander in Chief for the Time being, and His Majesty's Council of said Province, the first House to be Elected and Convened in the following manner, and to be stiled the General Assembly, vizt.

That there shall be Elected for the Province at large until the same shall be divided into Counties . . . . . 12 members,

| | | |
|---|---|---|
| For the Township of Halifax . . . . . | 4 | ,, |
| For the Township of Lunenburg . . . . . | 2 | ,, |
| For the Township of Dartmouth . . . . . | 1 | ,, |
| For the Township of Lawrence Town . . . . . | 1 | ,, |
| For the Township of Annapolis Royal . . . . . | 1 | ,, |
| For the Township of Cumberland . . . . . | 1 | ,, |
| | 22 | |

That until the said Townships can be more particularly described the limits thereof shall be deemed to be as follows, vizt.

That the Township of Halifax comprehend all the Lands lying Southerly of a line extending from the Westermost Head of Bedford Bason across to the Northeasterly Head of St. Margarets Bay with all the Islands nearest to said Lands, together with the Islands called Cornwallis's, Webbs and Rous's Islands.

That the Township of Lunenburg comprehend all the lands lying between Lahave River and the Eastermost Head of Mahone Bay, with all the Islands within said Bay and all the Islands within Mirliguash Bay and those islands lying to the Southward of the above Limits.

That the Township of Dartmouth comprehend all the Lands lying on the East side of the Harbour of Halifax and Bedford Bason, and extending and bounded Easterly by the Grant to the Proprietors of Lawrence Town & extending from the Northeasterly Head of Bedford Bason into the Country, until one hundred Thousand Acres be comprehended.

That the Township of Lawrence Town be bounded on the Ocean according to the limits of the Grant to the Proprietors, and thence under the same Lines to Extend into the Country till One hundred Thousand Acres be comprehended.

That the Township of Annapolis Royal be bounded Northerly by the Bay of Fundy and comprehend all the Lands from the Entrance of the Bason, to extend

up the River as far as the late french Inhabitants have possessed, and all the lands on the South side of the Bason and River of Annapolis under the same Limits East and West, and to extend Southerly till One hundred Thousand Acres be comprehended.

That the Township of Cumberland in the District of Chignecto, comprehend all the Lands lying between the Bason formerly called Beaubassin, now called Cumberland Bason, and the Bay Verte, and all those lands lying within Seven Miles of the Southwestward and Northwestward of the Road leading from said Bason to said Bay.

That when Twenty five Qualified Electors shall be settled at Pisiquid, Minas, Cobequid, or any other Townships which may hereafter be erected, each of the said Townships so settled, shall for their encouragement be entitled to send one Representative of the General Assembly, and shall likewise have a Right of voting in the Election of Representatives for the Province at large.

That the House shall always consist of at least Sixteen members present besides the Speaker, before they enter upon Business.

That no person shall be chosen as a member of the said House, or shall have a Right of Voting in the Election of any Member of the said House, who shall be a Popish Recusant, or shall be under the Age of Twenty One years, or who shall not at the time of such Election, be possessed in his own Right of a Freehold Estate within the District for which he shall be Elected, or shall so Vote, nor shall any Elector have more than One Vote for each Member to be chosen for the Province at large, or for any Township; and that each Freeholder present at such Election, and giving his Vote for one member for the Province at large shall be obliged to Vote also for the other Eleven.

That respecting Freeholds which may have been conveyed by the Sheriff, by virtue of an Execution, the Right of Voting shall remain and be in the Persons from whom the same were taken in Execution, until the time of Redemption be elapsed.

That no Non-Commissioned Officer or Private Soldier in actual Service shall have a Right of Voting, by virtue of any Dwelling built upon Sufferance, nor any Possession of Freehold, unless the same be registered to him.

That all the Electors shall, if so required at the time of the Election take the usual State Oaths appointed by Law, and declare and subscribe the Test.

That any Voter shall at the request of any Candidate be obliged to take the following Oath, which Oath together with the State Oaths, the Returning Officer is hereby empowered to administer.

"I, A. B. do swear that I am a freeholder in the Township of in the "Province of Nova Scotia, and have Freehold Lands or Hereditaments lying or "being at within the said Township, and that such Freehold Estate "hath not been made or granted to me fraudulently on purpose to qualify me "to give my vote, and that I have not received or had by myself, or any person "whatsoever in Trust for me, or for my use and benefit, directly or indirectly, "any sum or sums of money, office, place or employment, gift or reward, or any "promise or security for any money, office, employment or gift, in order to give "my vote at this Election, and that I have not before been Polled at this Election, "and that the Place of my abode is at ."

That a precept be issued by His Excellency the Governor to the Provost Marshal or Sheriff of the Province requiring him by himself or his Deputys to summon the Freeholders of the Province to meet within their respective Districts, at some convenient place and time, to be by the said Provost Marshal or one of his Deputies appointed, and of which he or they shall give Twenty days Notice then and there to elect (agreeable to the Regulations hereby prescribed) such a number of Representatives, as shall in the said precept be expressed, agreeable to the preceding detail.

That on account of the present rigorous season, the precept for Convening the first Assembly be made returnable in Sixty days from the date thereof, at which time the Assembly shall meet at such place as His Excellency the Governor shall appoint in the Precept.

That the Provost Marshal or his Deputy shall be the returning officer of the Elections, to be held by him with the Assistance of three of the Freeholders present, to be appointed and sworn by the returning officer for that purpose, and in case a scrutiny shall be demanded, the same shall be made by them, & in case of further contest the same to be determined by the House. The Poll for each Township to be closed at the expiration of Forty-eight hours from the time of

its being opened; and for the Province at large the Poll, after four days from the time of its being opened for the Election, shall be sealed up by the returning officer for each Township, and transmitted to the Provost Marshal by the first opportunity, that seasonable notice may be given to the persons who shall upon examination appear to have been chosen by the greatest number of the said votes. Provided nevertheless that if the votes in the Townships of Annapolis Royal and Cumberland for the first members for the province at large, shall not be returned Eight days before the expiration of the time limitted for returning the Precept, the Provost Marshal shall, in such case, proceed to declare who are the persons elected, from the other votes in his hands.

That the Provost Marshal or his Deputy, shall appoint for each Candidate, such one Person as shall be nominated to him by each candidate, to be Inspectors of the returning officer and his Assistants.

That no Person shall be deemed duly Elected who shall not have the vote of a majority of the Electors present.

That the names of all persons voted for together with Names of the Voters, shall at the time of Voting be publickly declared and entered on a Book kept for that purpose.

That in case of the Absence of any of the Members from the Province, for the term of Two months, it shall and may be lawful for the Governor, Lieutenant Governor, or Commander-in-Chief (if he shall judge it necessary) to issue his Precept for the choice of others in their stead.

That the Returning Officer shall cause the foregoing Resolution to be publicly read at the opening of each meeting for the Elections, and to govern the said Meetings agreeable thereto.

CHAS. LAWRENCE.

*Extract from letter of Lords of Trade to Governor Lawrence.*

Whitehall, March 10th, 1757.

We entirely agree in opinion with you that in the present Situation of things and vexed and harrassed as the Province is by the Hostilities of the French and Indians it will be in vain to attempt to induce hardy and industrious people to leave Possessions, which perhaps they may enjoy in peace in other Colonies, to come and settle in a Country where they must be exposed to every distress and Calamity which the most inveterate Enemy living in the Country and knowing every Pass and Corner of it can subject them to, and therefore we do not desire, nor mean to press this measure upon you further than the Circumstances of the Province & of the times will admit of. It does not however appear to us that the same reasons do altogether, tho' they may in part, operate against the calling an Assembly, concerning which We have given our Opinion so fully and We hope so explicitly in a former Leter, that no other difficulties can remain than those which arise from the obstruction and Embarrassment which such a measure may give to His Majesty's Service in time of War and which is a consideration that will however more or less weigh according to the manner in which the measure is carried into Execution, for which reason We thought it proper after pointing out to you as clearly as We were able, the general light in which this matter appeared to Us, to leave it to your Discretion to do it in such manner as you should think most proper, lest by prescribing any peculiar method We should lay you under Difficulties which our Ignorance of particular facts would not permit us to foresee, and in this as well as in every other Direction contained in our Letter upon this subject the principal Point we had in view was to avoid every thing that might give you unnecessary Trouble or Embarrassment in the Execution of a measure which our unprejudiced judgment suggested to us as absolutely necessary for the Peace, Welfare and Credit of the Colony, being one of the fundamental Principles upon which it was first established.

*Governor Lawrence to Lords of Trade.*

9th November, 1757.

As the calling an Assembly is doubtless a point of great importance to the welfare & prosperity of the Province and a measure about which I have been much more embarrassed than any other that has occurred since I have had the honor to conduct the administration of affairs here, I am extremely happy to find by your Lordships letter of the 10th of March last that your Lordships are

of opinion with me the same reasons may in part tho' perhaps not altogether, operate against calling an Assembly under the present circumstances of the times and of the Province, as served to obstruct the well peopling and settling the evacuated and other valuable Lands within it. That those reasons and obstructions did heretofore, and do still subsist was the opinion not only of your Lordships and myself but also of the most knowing of the most substantial and of the truest well wishers to the Colony's welfare, that are to be found amongst its inhabitants. Of the same opinion were the people of New England whose notions of liberty and of Government your Lordships are too well acquainted with to need any account thereof from me, for when I was amongst them last winter I took every occasion of discovering their sentiments on this subject in order to be well satisfied whether there was any truth in the reports that had been industriously propagated by some evilly disposed persons amongst us, that to the want of a House of Representatives it was principally owing that the evacuated lands were not already settled, the more I enquired into the truth of such reports the better I became convinced that they were without the least foundation. And I am further to observe to your Lordships that no person whatever with whom I have conversed and on whose judgment and advice I could the least rely, have of late considered the measure of calling an assembly of the people, situated and circumstanced as they are at present, and in a state of hostilities with so dangerous and near a neighbour, otherwise than as Chimerical. I have said above that the most substantial of our own Inhabitants have opposed it, and that they have done so may appear by their own memorials begging it might not take place whilst the Province continued in a state of War, knowing of how little use it could be, and of what disservice it possibly might be, those who have urged it, have done so, to inflame the minds of the people, who they have much deceived and misled to deprive me of their confidence and regard, and in short to embarrass the affairs of Government, without any other views than those of private advantage, and from no other motives than those of resentment for disappointments in places and employments with which it was not in my power to gratify them. As the uneasiness that has been given on this head has proceeded from scarcely any person that has property in the Province or that has even applied to me for the possession of an Acre of land within it, I shall pass over the Calumnies that have been spread, without troubling your Lordships further than just to observe, that had we been infinitely better prepared for such a measure than we truly are, my being called by the Earl of Loudoun to Boston last winter, my being ordered on the expedition against Louisbourg this summer, my going to Chignecto when that expedition was dropped and the multiplicity of military affairs in which the safety and the very being of the Colony have constantly engaged my attention, have rendered the accomplishment of such a measure utterly impracticable for these twelve months past. For these reasons I hope your Lordships cannot be displeased that it has not been already carried into execution, nor even that if it be deferred till some happy change in the face of American affairs promises more success in an undertaking of so much moment, nevertheless if it should be still your Lordships express pleasure that at all hazards and events an assembly shall absolutely be called without waiting for a favorable alteration in our circumstances, I beg leave to assure your Lordships that I shall without a moments delay after receiving your Lordships commands execute the plan that I formed last winter for that purpose, by the advice and assistance of His Majestys Council.

*Extract from letter of Lords of Trade to Governor Lawrence.*

Whitehall, Feby. 7, 1758.

We have fully considered that part of your Letter, which relates to the calling an Assembly, and also the Plan for that purpose, contained in the minutes of the Council transmitted with it, and having so often and so fully repeated to you our sense and opinion of the Propriety & Necessity of this measure taking place, it only now remains for Us to direct its being carried into immediate execution, that His Majesty's Subjects (great part of whom are alleged to have quitted the Province on account of the great discontent prevailing for want of an Assembly) may no longer be deprived of that privilege, which was promised to them by His Majesty, when the Settlement of this Colony was first undertaken, and was one of the Conditions upon which they accepted the Proposals then made.

We are sensible that the Execution of this measure may in the present situation of the Colony be attended with many difficulties, and possibly may in its consequences, in some respects interfere with, and probably embarrass His Majesty's Service; but without regard to these Considerations, or to what may be the opinion of individuals with respect to this measure, We think it of indispensable necessity that it should be immediately carried into execution.

We approve in general that part of your plan which establishes Townships and ascertains their Limits as corresponding with the Plan laid down in the Instructions given to Mr. Cornwallis at the first Settlement of the Colony; but We do not think it advisable, that any of those Townships, which has not fifty settled families, should be allowed to send Representatives to the Assembly; and therefore we would propose that for the present, those only, which have that number of Settled Families, should have that Privilege, & that the rest of the members, computing the whole at twenty two, should be elected for the Province at large, considered as one County, according to the Plan agreed upon, but that whenever any of those Townships, which are now established, or any others which may be hereafter established, shall contain Fifty Settled Families, they shall be entitled to a Writ for electing two Representatives, and the number of the members for the whole Province at large, considered as one County, shall be diminished in proportion.

As to the other parts of your Plan, they do not appear to us liable to objection, excepting only that part which establishes the Quorum of the Assembly, and fixes it at Seventeen, which We apprehend to be too great a proportion of the whole; and that it ought not at the most to exceed one half of the whole number, which is more agreeable to what has been judged to be proper in cases of other American Assemblies, whose great Inconveniencies have been found to result from the Quorum of the Assembly being too great a proportion of the whole.

With respect to the time which it may be proper to fix for the Return of the Writs, We would wish that you should inform yourself of what has been the general Rule in cases of the like kind in other Colonies, so far as the situation and circumstances of Nova Scotia will admit of it. What this Rule has been we are not at present sufficiently apprized; but of which you will be able to inform yourself from the many Persons now in Nova Scotia, who have come from other Colonies, and are doubtless well acquainted with what has been the Custom in this case: But whatever this Rule may be, or however short the Term (and we apprehend the shorter it is, the better, provided it leaves sufficient time for the due execution of the Writs) no great Inconveniencies can arise from it, because it will be in your Power whatever day may be fixed by the Writs for the Assembly's meeting, to postpone it to some further day by a Proclamation of Prorogue, in case you shall find that it will interfere with any particular services which yourself or the Lieut. Governor may be employed in, and which must necessarily prevent their proceeding upon Business.

At a Council holden at the Governors House in Halifax on Saturday the 20th May 1758.

PRESENT—

His Excellency the Governor,
The Lieut. Governor,

Jonn. Belcher,
Jno. Collier,
Montague Willmot,
} Councs. {
Benj. Green,
Robt. Grant,
Chas. Morris,

. . . . . His Excellency having communicated to the Council an Extract of a Letter to him from their Lordships of the Board of Trade dated February 7th 1758, relative to the Plan framed by the Governor & Council on the 3rd day of January 1757, and transmitted to their Lordships by the Governor, for carrying into Execution His Majesty's Instructions upon calling General Assemblies within the Province, Signifying their Lordships Approbation of the same in General, with some few alterations, which being Considered the Council came to the following Resolution thereon, vizt., That the said Plan with the amendments proposed by their Lordships shall be forthwith carried into Execution and Published in Form as follows vizt.

His Excellency the Governor, together with His Majesty's Council having had under mature Consideration, the necessary and most expedient measures for

carrying into execution those Parts of His Majesty's Commission and Instructions which relate to the calling of General Assemblies within the Province, came to the following Resolutions thereon vizt.,

That a House of Representatives of the Inhabitants of this Province be the Civil Legislature thereof in conjunction with His Majesty's Governor or Commander in Chief for the time being, and His Majesty's Council of the said Province. The first House to be elected and convened in the following manner, and to be stiled the General Assembly, vizt.,

That there shall be elected for the Province at large until the same be divided into Counties Sixteen members, for the township of Halifax Four, for the township of Lunenburg Two.

That until the said Townships can be more particularly described, the Limits thereof shall be deemed to be as follows vizt.,

That the Township of Halifax comprehend all the lands lying Southerly of a Line extending from the Westermost Head of Bedford Basin across to the Northeasterly Head of St. Margaret's Bay, with all the Islands nearest to said lands, together with the islands called Cornwallis's, Webbs, & Rous's Islands.

That the Township of Lunenburg comprehend all the Lands between Lahave River and the Eastermost head of Mahone Bay, with all the islands within said Bay, and all the islands within Mirliguash Bay, and those islands lying to the Southwards of the above Limits.

That when Fifty qualified Electors shall be Settled at Pisiquid, Minas, Cobequid, or any other Townships which may hereafter be Elected, each of the said Townships so settled shall, for their Encouragement, be intitled to send two Representatives to the General Assembly, and shall likewise have a right of voting in the Election of Representatives for the Province at large.

That the House shall always consist of at least Eleven members present besides the Speaker, before they enter upon Business.

[Remaining Clauses the same as those contained in the Minutes of Council of 3rd January, 1757.]

*Extract from letter of Governor Lawrence to Lords of Trade.*

Halifax, 26 September, 1758.

As the day fixed for the meeting of the Assembly draws nigh, I hope I may be able to dispatch such business with them as may be necessary for the present, without too much loss of time in rejoining the Army as directed by the General. The principal point which I apprehend will be necessary (after the Forms requisite to be attended to upon their first coming together) is that of a sanction being given to what the Governors with the Council have hitherto done here in a legislative way, and then appointing a Committee of both Houses to prepare drafts of such laws as may be necessary for the future good Government of the Province, to be passed, upon mine or the Lieut. Governor's return to this place.

I hope I shall not find in any of them a disposition to embarrass or obstruct his Majesty's service or to dispute the Royal prerogative, though I observe that too many of the Members chosen are such as have not been the most remarkable for promoting unity or obedience to His Majesty's Government here, or, indeed that have the most natural attachments to the Province.

*Extract from a letter of Governor Lawrence to Lords of Trade.*

Halifax, 26 December, 1758.

I have now the honor to acquaint your Lordships, that the assembly met according to appointment on the 2nd of October, and passed a number of laws, a list of which are enclosed and I have reason to hope from their proceedings hitherto, that we shall get through the whole business in good time, and with less altercation than (from the seeming disposition of the people) I was heretofore apprehensive of. Whenever the session is closed I shall take particular care that your Lordships have fair copies of the laws at large, under the Seal of the Province as directed by His Majesty's Instructions together with transcripts of the Journal and Proceedings of the Council and Assembly during their session.

# SECOND PERIOD

## 1759–1763

## SECOND PERIOD

### 1759–1763

After the capitulations of Quebec and Montreal, military rule prevailed in the province of Quebec, modified by the Articles of Capitulation (see Nos. IV and V), which were confirmed at the conclusion of the war by the Treaty of Paris, February 10, 1763 (see No. VI). In the following October a Royal Proclamation was issued as a preliminary for the introduction of civil administration (see No. VII). The policy outlined is tentative and led to severe disputes during the Third Period.

According to the judgement of Lord Chief Justice Mansfield in *Campbell v. Hall* (see No. XXVIII), this Proclamation was the constitution of Canada until the Quebec Act of 1774, by which it was annulled.

## IV

## ARTICLES OF THE CAPITULATION OF QUEBEC, 1759[1]

[Trans.: Shortt and Doughty, *Constitutional Documents*, Canadian Archives, 1918.]

Demanded by Mr. de Ramsay, the King's Lieutenant, commanding the high and low Towns of Quebec, Chief of the military order of St. Lewis, to His Excellency the General of the troops of His Britannic Majesty.—"The capitulation demanded "on the part of the enemy, and granted by their Excellencies Admiral Saunders "and General Townshend, etc., etc., is in manner and form hereafter expressed."

I

Mr. de Ramsay demands the honours of war for his garrison, and that it shall be sent back to the army in safety, and by the shortest route, with arms, baggage, six pieces of brass cannon, two mortars or howitzers, and twelve rounds for each of them:—"The garrison of the town, composed of Land forces, marines and sailors, "shall march out with their arms and baggage, drums beating, matches lighted, "with two pieces of french cannon, and twelve rounds for each piece; and shall "be embarked as conveniently as possible, to be sent to the first port in France."

II

That the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges:—"Granted, upon their laying down their arms."

III

That the inhabitants shall not be accountable for having carried arms in the defence of the town, for as much as they were compelled to it, and that the inhabitants of the colonies, of both crowns, equally serve as militia.—"Granted."

IV

That the effects of the absent officers and citizens shall not be touched. —"Granted."

V

That the inhabitants shall not be removed, nor obliged to quit their houses, until their condition shall be settled by their Britannic, and most Christian, Majesties.—"Granted."

VI

That the exercise of the Catholic, Apostolic, and Roman religion shall be maintained; and that safeguards shall be granted to the houses of the clergy, and to the monasteries, particularly to his Lordship the Bishop of Quebec, who, animated with zeal for religion, and charity for the people of his diocese, desires to reside in it constantly, to exercise, freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties.—"The free exercise of the roman religion is granted, like- "wise safeguards to all religious persons, as well as to the Bishop, who shall be at "liberty to come and exercise, freely and with decency, the functions of his office, "whenever he shall think proper, until the possession of Canada shall have been "decided between their Britannic and most Christian Majesties."

VII

That the artillery and warlike stores shall be faithfully given up, and that an inventory of them shall be made out.—"Granted."

[1] This and the following document represent the French terms of surrender to the British. The first part of each section in each document is the French stipulation; the part in inverted commas in each section of each document is the British comment. The documents as printed represent the actual contracts of surrender, after which 'the rule of the soldiers' began in Canada and continued till the conclusion of the Seven Years' War, when the civil administration began.

VIII

That the sick and wounded, the commissaries, Chaplains, Physicians, Surgeons, Apothecaries, and other people employed in the service of the hospitals, shall be treated conformably to the cartel of the 6th of February, 1759, settled between their most Christian and Britannic Majesties.—"Granted."

IX

That before delivering up the gate and the entrance of the town to the English troops, their General will be pleased to send some soldiers to be posted as safeguards upon the churches, convents, and principal habitations.—"Granted."

X

That the King's Lieutenant, commanding in Quebec, shall be permitted to send information to the marquis de Vaudreuil, Governor-General, of the reduction of the place, as also that the General may send advice thereof to the french Ministry. —"Granted."

XI

That the present capitulation shall be executed according to its form and tenour, without being subject, to non-execution under pretence of reprisals, or for the non-execution of any preceding capitulations.—"Granted."

Duplicates hereof taken and executed by, and between us, at the camp before Quebec, this 18th day of September, 1759.

Charles Saunders,
George Townshend,
De Ramsay.

V

## ARTICLES OF THE CAPITULATION OF MONTREAL, 1760

[Trans.: Shortt and Doughty.]

Between their Excellencies Major-General Amherst, Commander-in-Chief of His Britannic Majesty's troops and forces in North America, on the one part, and the Marquis de Vaudreuil, &c., Governor and Lieutenant-General for the King in Canada, on the other.

ARTICLE I

Twenty-four hours after the signing of the present capitulation, the British General shall cause the troops of His Britannic Majesty to take possession of the gates of the town of Montreal: and the British garrison shall not enter the place till after the French troops shall have evacuated it.—"The whole garrison of "Montreal must lay down their arms, and shall not serve during the present war. "Immediately after the signing of the present capitulation, the King's troops "shall take possession of the gates, and shall post the guards necessary to preserve "good order in the town."

ARTICLE II

The troops and the militia, who are in garrison in the town of Montreal, shall go out by the gate of Quebec, with all the honours of war, six pieces of cannon and one mortar, which shall be put on board the vessel where the Marquis de Vaudreuil shall embark, with ten rounds for each piece; and the same shall be granted to the garrison of the Three Rivers, as to the honours of war.—"Referred "to the next article."

ARTICLE III

The troops and militia, who are in garrison in the Fort of Jacques Cartier, and in the Island of St. Helen, and other forts, shall be treated in the same manner, and shall have the same honours; and these troops shall go to Montreal, or the Three Rivers or Quebec; to be there embarked for the first sea port in France, by the shortest way. The troops, who are in our posts, situated on our frontiers, on the side of Acadia, at Detroit, Michilimaquinac, and other posts, shall enjoy the same honours, and be treated in the same manner.—"All these troops are not "to serve during the present war, and shall likewise lay down their arms; the rest "is granted."

ARTICLE IV

The militia, after evacuating the above towns, forts and posts, shall return to their habitations, without being molested on any pretence whatever, on account of their having carried arms.—"Granted."

ARTICLE V

The troops, who keep the field, shall raise their camp, drums beating, with their arms, baggage and artillery, to join the garrison of Montreal, and shall be treated in every respect the same.—"These troops, as well as the others, must "lay down their arms."

ARTICLE VI

The subjects of His Britannic Majesty, and of his most Christian Majesty, soldiers, militia or seamen, who shall have deserted or left the service of their Sovereign, and carried arms in North America, shall be, on both sides, pardoned for their crime; they shall be respectively returned to their country; if not, each shall remain where he is without being sought after or molested.—"Refused."

ARTICLE VII

The magazines, the artillery, firelocks, sabres, ammunition of war, and, in general everything that belongs to his most Christian Majesty, as well in the towns of Montreal and Three Rivers, as in the forts and post mentioned in the Third Article shall be delivered up, according to exact inventories, to the commissaries who shall be appointed to receive the same in the name of His Britannic Majesty. Duplicates of the said inventories shall be given to the Marquis de Vaudreuil.—"This is everything that can be asked on this article."

ARTICLE VIII

The officers, soldiers, militia, seamen, and even the Indians, detained on account of their wounds or sickness, as well as in the hospital, as in private houses, shall enjoy the privileges of the cartel, and be treated accordingly.—"The sick "and wounded shall be treated the same as our own people."

ARTICLE IX

The British General shall engage to send back, to their own homes, the Indians and Moraignans, who make part of his armies, immediately after the signing of the present capitulation, and, in the meantime, the better to prevent all disorders on the part of those who may not be gone away, the said General shall give safeguards to such persons as shall desire them, as well in the town as in the country. —"The first part refused." "There never have been any cruelties committed by "the Indians of our army: and good order shall be preserved."

ARTICLE X

His Britannic Majesty's General shall be answerable for all disorders on the part of his troops, and shall oblige them to pay the damages they may do, as well in the towns as in the country.—"Answered by the preceding article."

ARTICLE XI

The British General shall not oblige the Marquis de Vaudreuil to leave the town of Montreal before . . . and no person shall be quartered in his house till he is gone. The Chevalier de Levis, Commander of the land forces and colony troops, the Engineers, Officers of the Artillery, and Commissary of War, shall also remain at Montreal till the said day, and shall keep their lodgings. The same shall be observed with regard to M. Bigot, Intendant, the Commissaries of Marines and writers, whom the said M. Bigot shall have occasion for, and no person shall be lodged at the Intendant's house before he shall take his departure. —"The Marquis de Vaudreuil, and all these gentlemen, shall be masters of their "houses, and shall embark, when the King's ship shall be ready to sail for Europe; "and all possible conveniences shall be granted them."

ARTICLE XII

The most convenient vessel that can be found shall be appointed to carry the Marquis de Vaudreuil, M. de Rigaud, the Governor of Montreal, and the suite of this General, by the straitest passage to the first sea port in France; and every

necessary accommodation shall be made for them. This vessel shall be properly victualled at the expence of His Britannic Majesty: and the Marquis de Vaudreuil shall take with him his papers, without their being examined, and his equipages, plate, baggage, and also those of his retinue.—"Granted, except the archives "which shall be necessary for the Government of the country."

ARTICLE XIII

If before, or after, the embarkation of the Marquis de Vaudreuil, news of peace should arrive, and, that by treaty, Canada should remain to his most Christian Majesty, the Marquis de Vaudreuil shall return to Quebec or Montreal; everything shall return to its former state under the Dominion of his most Christian Majesty, and the present capitulation shall become null and of no effect.—"Whatever the "King may have done, on this subject, shall be obeyed."

ARTICLE XIV

Two ships will be appointed to carry to France, le Chevalier de Levis, the principal officers, and the staff of the land forces, the engineers, officers of artillery, and their domestics. These vessels shall likewise be victualled and the necessary accommodation provided in them. The said officers shall take with them their papers, without being examined, and also, their equipages and baggage. Such of the said officers as shall be married shall have liberty to take with them their wives and children, who shall also be victualled.—"Granted, except that the "Marquis de Vaudreuil and all the officers, of whatever rank they may be, shall "faithfully deliver to us all the charts and plans of the country."

ARTICLE XV

A vessel shall also be appointed for the passage of Mr. Bigot, the Intendant, with his suite; in which vessel the proper accommodation shall be made for him, and the persons he shall take with him: he shall likewise embark with him his papers, which shall not be examined: his equipages, plate, baggage and those of his suite: this vessel shall be victualled as before mentioned.—"Granted, with the "same reserve as in the preceding article."

ARTICLE XVI

The British General shall also order the necessary and most convenient vessels to carry to France M. de Longueuil, Governor of Trois Rivieres, the staff of the colony, and the commissary of the Marine; they shall embark therein their families, servants, baggage and equipages, and they shall be properly victualled, during the passage, at the expense of His Britannic Majesty.—"Granted."

ARTICLE XVII

The officers and soldiers, as well as of the land forces, as of the colony, and also the marine officers and seamen, who are in the colony, shall be likewise embarked for France, and sufficient and convenient vessels shall be appointed for them. The land and sea officers who shall be married, shall take with them their families, and all of them shall have liberty to embark their servants and baggage. As to the soldiers and seamen, those who are married shall take with them their wives and children, and all of them shall embark their haversacks and baggage; these vessels shall be properly and sufficiently victualled at the expense of His Britannic Majesty.—"Granted."

ARTICLE XVIII

The officers, soldiers and the followers of the troops, who shall have their baggage in the fields, may send for it before they depart, without any hindrance or molestation.—"Granted."

ARTICLE XIX

An hospital ship shall be provided by the British General, for such of the wounded and sick officers, soldiers and seamen as shall be in a condition to be carried to France, and shall likewise be victualled at the expense of His Britannic Majesty. It shall be the same with regard to the other wounded and sick officers, soldiers and sailors, as soon as they shall be recovered. They shall have liberty to carry with them their wives, children, servants and baggage; and the said soldiers and sailors shall not be solicited nor forced to enter into the service of His Britannic Majesty.—"Granted."

ARTICLE XX

A Commissary and one of the King's Writers shall be left to take care of the hospitals, and whatever may relate to the service of his most Christian Majesty. —"Granted."

ARTICLE XXI

The British General shall also provide ships for carrying to France the officers of the supreme council, of justice, police, admiralty, and all other officers, having commissions or brevets from his most Christian Majesty, for them, their families, servants and equipages, as well as for the other officers: and they shall likewise be victualled at the expense of His Britannic Majesty. They shall, however, be at liberty to stay in the colony, if they think proper to settle their affairs, or to withdraw to France whenever they think fit.—"Granted; but if they have papers "relating to the Government of the country, they are to be delivered up to us."

ARTICLE XXII

If there are any military officers, whose affairs should require their presence in the colony till the next year, they shall have liberty to stay in it, after having obtained the permission of the Marquis de Vaudreuil for that purpose, and without being reputed prisoners of war.—"All those whose private affairs shall require "their stay in the country, and who shall have the Marquis de Vaudreuil's leave "for so doing, shall be allowed to remain till their affairs are settled."

ARTICLE XXIII

The commissary for the King's provisions shall be at liberty to stay in Canada till next year, in order to be enabled to answer the debts he has contracted in the colony, on account of what he has furnished; but, if he should prefer to go to France this year, he shall be obliged to leave, till next year, a person to transact his business. This private person shall preserve, and have liberty to carry off, all his papers, without being inspected. His clerks shall have leave to stay in the colony or go to France; and in this last case, a passage and subsistence shall be allowed them on board the ships of His Britannic Majesty, for them, their families, and their baggage.—"Granted."

ARTICLE XXIV

The provisions and other kind of stores, which shall be found in the magazines of the commissary, as well in the towns of Montreal, and of the Three Rivers, as in the country, shall be preserved to him, the said provisions belonging to him, and not to the King; and he shall be at liberty to sell them to the French and English.—"Everything that is actually in the magazines, destined for the use of "the troops, is to be delivered to the British commissary, for the King's forces."

ARTICLE XXV

A passage to France shall likewise be granted, on board of His Britannic Majesty's ships, as well as victuals to such officers of the India company as shall be willing to go thither, and they shall take with them their families, servants and baggage. The chief agent of the said company, in case he should chuse to go to France, shall be allowed to leave such person as he shall think proper till next year, to settle the affairs of the said company, and to recover such sums as are due to them. The said chief agent shall keep possession of all the papers belonging to the said company, and they shall not be liable to inspection.—"Granted."

ARTICLE XXVI

The said company shall be maintained in the property of the Ecarlatines and Castors, which they may have in the town of Montreal; they shall not be touched under any pretence whatever, and the necessary licenses shall be given to the Chief Agent, to send this year his Castors to France, on board His Britannic Majesty's ships, paying the freight on the same footing as the British would pay it.—"Granted, with regard to what may belong to the company, or to private "persons; but if his most Christian Majesty has any share in it, that must become 'the property of the King."

ARTICLE XXVII

The free exercise of the Catholic, Apostolic, and Roman religion, shall subsist entire, in such manner that all the states and the people of the towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay their priests the tithes, and all the taxes they were used to pay under the Government of his most Christian Majesty.—"Granted, as to the "free exercise of their religion; the obligation of paying the tithes to the priests "will depend on the King's pleasure."

ARTICLE XXVIII

The Chapter, Priests, Curates and Missionaries shall continue, with an entire liberty, their exercise and functions of cures, in the parishes of the towns and countries.—"Granted."

ARTICLE XXIX

The Grand Vicars, named by the Chapter to administer to the diocese during the vacancy of the Episcopal See, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the Diocese with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French Dominion. They shall enjoy the same rights in case of the death of the future Bishop, of which mention will be made in the following article.—"Granted, except what regards "the following article."

ARTICLE XXX

If by the treaty of peace, Canada should remain in the power of His Britannic Majesty, his most Christian Majesty shall continue to name the Bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman religion.—"Refused."

ARTICLE XXXI

The Bishop shall, in case of need, establish new parishes, and provide for the rebuilding of his Cathedral and his Episcopal palace; and, in the meantime, he shall have the liberty to dwell in the towns or parishes, as he shall judge proper. He shall be at liberty to visit his Diocese with the ordinary ceremonies, and exercise all the jurisdiction which his predecessor exercised under the French Dominion, save that an oath of fidelity, or a promise to do nothing contrary to His Britannic Majesty's service, may be required of him.—"This article is com- "prised under the foregoing."

ARTICLE XXXII

The communities of nuns shall be preserved in their constitutions and privileges; they shall continue to observe their rules, they shall be exempted from lodging any military, and it shall be forbid to molest them in their religious exercises, or to enter their monasteries: safe-guards shall even be given them, if they desire them.—"Granted."

ARTICLE XXXIII

The preceding article shall likewise be executed, with regard to the communities of Jesuits and Recollects and of the house of the priests of St. Sulpice at Montreal; these last, and the Jesuits, shall preserve their right to nominate to certain curacies and missions, as heretofore.—"Refused till the King's pleasure "be known."

ARTICLE XXXIV

All the communities, and all the priests, shall preserve their moveables, the property and revenues of the Seignories and other estates, which they possess in the colony, of what nature soever they be; and the same estates shall be preserved in their privileges, rights, honours, and exemptions.—"Granted."

ARTICLE XXXV

If the Canons, Priests, Missionaries, the Priests of the seminary of the foreign Missions, and of St. Sulpice, as well as the Jesuits, and the Recollects, chuse to

go to France, a passage shall be granted them in His Britannic Majesty's ships, and they shall have leave to sell, in whole, or in part, the estates and moveables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government. They may take with them, or send to France, the produce of what nature soever it be, of the said goods sold, paying the freight as mentioned in the XXVIth article; and such of the said Priests, who chuse to go this year, shall be victualled during the passage, at the expense of His Britannic Majesty; and they shall take with them their baggage.—"They shall be masters to dispose of their estates and to send the "produce thereof, as well as their persons, and all that belongs to them, to "France."

ARTICLE XXXVI

If by the treaty of peace, Canada remains to His Britannic Majesty, all the French, Canadians, Acadians, merchants and other persons who chuse to retire to France, shall have leave to do so from the British General, who shall procure them a passage: and nevertheless, if, from this time to that decision, any French or Canadian merchants or other persons, shall desire to go to France, they shall likewise have leave from the British General. Both the one and the other shall take with them their families, servants, baggage.—"Granted."

ARTICLE XXXVII

The Lords of Manors, the Military and Civil officers, the Canadians as well in the towns as in the country, the French settled, or trading, in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of the goods, noble and ignoble, moveable and immoveable, merchandises, furs and other effects, even their ships; they shall not be touched, nor the least damage done to them, on any pretence whatever. They shall have liberty to keep, let or sell them, as well to the French as to the British; to take away the produce of them in bills of exchange, furs, specie or other returns, whenever they shall judge proper to go to France, paying their freight, as in the XXVIth article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal; and, for this purpose, they shall have leave to send, this year, or the next, canoes fitted out, to fetch such of the said furs as shall have remained in those posts.—"Granted, as in the XXVIth article."

ARTICLE XXXVIII

All the people who have left Acadia, and who shall be found in Canada, including the frontiers of Canada on the side of Acadia, shall have the same treatment as the Canadians, and shall enjoy the same privileges.—"The King is to "dispose of his ancient subjects: in the meantime, they shall enjoy the same "privileges as the Canadians."

ARTICLE XXXIX

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit, Michillimaquinac, and other places and posts of the countries above, the married and unmarried soldiers, remaining in Canada, shall be carried or transported into the British colonies, or to Great Britain, and they shall not be troubled for having carried arms.—"Granted, except with regard to the Acadians."

ARTICLE XL

The savages or Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit, if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars General, and the Bishop, when the Episcopal See shall be filled, shall have leave to send to them new missionaries when they shall judge it necessary.—"Granted, except the last article, which has "been already refused."

ARTICLE XLI

The French, Canadians, and Acadians, of what state and condition soever, who shall remain in the colony, shall not be forced to take arms against his most

Christian Majesty, or his Allies, directly or indirectly, on any occasion whatsoever; the British Government shall only require of them an exact neutrality.—"They become subjects of the King."

ARTICLE XLII

The French and Canadians shall continue to be governed according to the custom of Paris, and the laws and usages established for this country, and they shall not be subject to any other imposts than those which were established under the French Dominions.—"Answered by the preceding articles, and particularly "by the last."

ARTICLE XLIII

The papers of the Government shall remain, without exception, in the power of the Marquis de Vaudreuil and shall go to France with him. These papers shall not be examined on any pretence whatsoever.—"Granted, with the reserve "already made."

ARTICLE XLIV

The papers of the Intendancy, of the offices of Comptroller of the Marine, of the ancient and new treasurers of the King's magazines, of the offices of the revenues and forges of St. Maurice, shall remain in the power of M. Bigot, the Intendant; and they shall be embarked for France in the same vessel with him; these papers shall not be examined.—"The same as in this article."

ARTICLE XLV

The Registers, and other papers of the Supreme Council of Quebec, of the Prévoté, and Admiralty of the said city; those of the Royal Jurisdictions of Trois Rivieres and of Montreal; those of the Seignorial Jurisdictions of the colony; the minutes of the Acts of the Notaries of the towns and of the countries; and in general, the acts, and other papers, that may serve to prove the estates and fortunes of the citizens, shall remain in the colony, in the rolls of the jurisdictions on which these papers depend.—"Granted."

ARTICLE XLVI

The inhabitants and merchants shall enjoy all the privileges of trade, under the same favours and conditions granted to the subjects of His Britannic Majesty, as well as in the countries above, as the interior of the colony.—"Granted."

ARTICLE XLVII

The negroes and panis of both sexes shall remain, in their quality of slave, in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the colony, or to sell them; and they may also continue to bring them up in the Roman religion.—"Granted, except "those who shall have been made prisoners."

ARTICLE XLVIII

The Marquis de Vaudreuil, the General and Staff Officers of the land forces, the Governors and Staff Officers of the different places of the colony, the Military and Civil Officers, and all other persons who shall leave the colony, or who are already absent, shall have leave to name and appoint attornies to act for them, and in their name in the administration of their effects, moveable and immoveable, until the peace; and, if, by the treaty between the two crowns, Canada does not return under the French dominions, these officers, or other persons, or attornies for them, shall have leave to sell their manors, houses, and other estates, their moveables and effects, etc., to carry away or send to France, the produce thereof, either in bills of exchange, specie, furs or other returns, as is mentioned in the XXXVIIth Article.—"Granted."

ARTICLE XLIX

The inhabitants and other persons, who shall have suffered any damage in their goods, moveable or immoveable, which remained at Quebec, under the faith of the capitulation of that city, may make their representations to the British Government, who shall render them due justice against the person to whom it shall belong.—"Granted."

ARTICLE L, AND LAST

The present capitulation shall be inviolably executed in all its articles, and bonâ fide, on both sides, notwithstanding any infraction, and any other pretence, with regard to the preceding capitulations, and without making use of reprisals. —"Granted."

POSTSCRIPT

ARTICLE LI

The British General shall engage, in case any Indians remain after the surrender of this town, to prevent their coming into the towns, and that they do not, in any manner, insult the subjects of his most Christian Majesty.—"Care shall be taken that the Indians do not insult any of the subjects of his most Christian Majesty."

ARTICLE LII

The troops and other subjects of his most Christian Majesty, who are to go to France, shall be embarked, at latest, fifteen days after the signing of the present capitulation.—"Answered by the XIth Article."

ARTICLE LIII

The troops and other subjects of his most Christian Majesty, who are to go to France, shall remain lodged and incamped in the town of Montreal, and other posts which they now occupy, till they shall be embarked for their departure; passports, however, shall be granted to those who shall want them, for the different places of the colony, to take care of their affairs.—"Granted."

ARTICLE LIV

All the officers and soldiers of the troops in the service of France, who are prisoners in New England; and who were taken in Canada, shall be sent back, as soon as possible, to France, where their ransom or exchange shall be treated of, agreeable to the cartel; and if any of these officers have affairs in Canada, they shall have leave to come there.—"Granted."

ARTICLE LV

As to the officers of the Militia, the Militia, and the Acadians, who are prisoners in New England, they shall be sent back to their countries.

Done at Montreal, the 8th of September, 1760.

"VAUDREUIL."

Granted, except what regards the Acadians. Done in the camp before Montreal, the 8th September, 1760.

"JEFFERY AMHERST."

## VI

## TREATY OF PARIS, FEBRUARY 10, 1763[1]

[Trans.: Shortt and Doughty.]

*The definitive Treaty of Peace and Friendship between* His Britannick Majesty, *the* Most Christian King, *and the* King of Spain. *Concluded at* Paris *the 10th day of* February, 1763. *To which the* King *of* Portugal *acceded on the same day.*

* * * * * *

Article I. There shall be a Christian, universal, and perpetual peace, as well by sea as by land, and a sincere and constant friendship shall be re-established between their Britannick, Most Christian, Catholick, and Most Faithful Majesties, and between their heirs and successors, kingdoms, dominions, provinces, countries, subjects, and vassals, of what quality or condition soever they be, without exception of places or of persons: So that the high contracting parties shall give the greatest attention to maintain between themselves and their said dominions and subjects this reciprocal friendship and correspondence, without permitting, on either side, any kind of hostilities, by sea or by land, to be committed from henceforth, for any cause, or under any pretence whatsoever, and every thing shall be carefully avoided which might hereafter prejudice the union happily re-established, applying themselves, on the contrary, on every occasion, to procure for

[1] Only those articles of the Treaty have been printed which are essential to Canadian history.

each other whatever may contribute to their mutual glory, interests, and advantages, without giving any assistance or protection, directly or indirectly, to those who would cause any prejudice to either of the high contracting parties: there shall be a general oblivion of every thing that may have been done or committed before or since the commencement of the war which is just ended.

II. The treaties of Westphalia of 1648; those of Madrid between the Crowns of Great Britain and Spain of 1667, and 1670; the treaties of peace of Nimeguen of 1678, and 1679; of Ryswick of 1697; those of peace and of commerce of Utrecht of 1713; that of Baden of 1714; the treaty of the triple alliance of the Hague of 1717; that of the quadruple alliance of London of 1718; the treaty of peace of Vienna of 1738; the definitive treaty of Aix la Chapelle of 1748; and that of Madrid, between the Crowns of Great Britain and Spain of 1750: as well as the treaties between the Crowns of Spain and Portugal of the 13th of February, 1668; of the 6th of February, 1715; and of the 12th of February, 1761; and that of the 11th of April, 1713, between France and Portugal, with the guaranties of Great Britain, serve as a basis and foundation to the peace, and to the present treaty: and for this purpose they are all renewed and confirmed in the best form, as well as all the general, which subsisted between the high contracting parties before the war, as if they were inserted here word for word, so that they are to be exactly observed, for the future, in their whole tenor, and religiously executed on all sides, in all their points, which shall not be derogated from by the present treaty, notwithstanding all that may have been stipulated to the contrary by any of the high contracting parties: and all the said parties declare, that they will not suffer any privilege, favour, or indulgence to subsist, contrary to the treaties above confirmed, except what shall have been agreed and stipulated by the present treaty.

* * * * * *

IV. His Most Christian Majesty renounces all pretensions which he has heretofore formed or might have formed to Nova Scotia or Acadia in all its parts, and guaranties the whole of it, and with all its dependencies, to the King of Great Britain: Moreover, his Most Christian Majesty cedes and guaranties to his said Britannick Majesty, in full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the gulph and river of St. Lawrence, and in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King, and to the Crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned. His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholick subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the French inhabitants, or others who had been subjects of the most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of His Britannick Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions: The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

V. The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the Island of Newfoundland, such as it is specified in the XIIIth article of the treaty of Utrecht; which article is renewed and confirmed by the present treaty, (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulph of St. Lawrence): And His Britannick Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the gulph of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the

continent as those of the islands situated in the said gulph of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton, out of the said gulph, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said gulph, shall remain on the foot of former treaties.

VI. The King of Great Britain cedes the islands of St. Pierre and Macquelon, in full right, to his Most Christian Majesty, to serve as a shelter to the French fishermen; and his said Most Christian Majesty engages not to fortify the said islands; to erect no buildings upon them but merely for the conveniency of the fishery; and to keep upon them a guard of fifty men only for the police.

VII. In order to re-establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America; it is agreed, that, for the future, the confines between the dominions of His Britannick Majesty and those of his Most Christian Majesty in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain to the sea; and for this purpose, the Most Christian King cedes in full right, and guaranties to His Britannick Majesty the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the River Mississippi, except the town of New Orleans and the island in which it is situated, which shall remain to France, provided that the navigation of the River Mississippi shall be equally free, as well to the subjects of Great Britain, as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth: It is farther stipulated, that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations inserted in the IVth article, in favour of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article.

VIII. The King of Great Britain shall restore to France the islands of Guadaloupe, of Mariegalante, of Desirade, of Martinico, and of Belle-isle; and the fortresses of these islands shall be restored in the same condition they were in when they were conquered by the British arms, provided that His Britannick Majesty's subjects, who shall have settled in the said islands, or those who shall have any commercial affairs to settle there or in other places restored to France by the present treaty, shall have liberty to sell their lands and their estates, to settle their affairs, to recover their debts, and to bring away their effects as well as their persons, on board vessels, which they shall be permitted to send to the said islands and other places restored as above, and which shall serve for this use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts or of criminal prosecutions: and for this purpose, the term of eighteen months is allowed to His Britannick Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty; but, as the liberty granted to His Britannick Majesty's subjects, to bring away their persons and their effects, in vessels of their nation, may be liable to abuses if precautions were not taken to prevent them; it has been expressly agreed between his Britannick Majesty and his Most Christian Majesty, that the number of English vessels which have leave to go to the said islands and places restored to France, shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a fixed time; and shall make one voyage only; all the effects belonging to the English being to be embarked at the same time. It has been farther agreed, that his Most Christian Majesty shall cause the necessary passports to be given to the said vessels; that, for the greater security, it shall be allowed to place two French clerks or guards in each of the said vessels, which shall be visited in the landing places and ports of the said islands and places restored to France, and that the merchandize which shall be found therein shall be confiscated.

IX. The Most Christian King cedes and guaranties to his Britannick Majesty, in full right, the islands of Grenada, and the Grenadines, with the same stipulations in favour of the inhabitants of this colony, inserted in the IVth article for

those of Canada: And the partition of the islands called neutral, is agreed and fixed, so that those of St. Vincent, Dominico, and Tobago shall remain in full right to Great Britain, and that of St. Lucia shall be delivered to France, to enjoy the same likewise in full right, and the high contracting parties guaranty the partition so stipulated.

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XVII. His Britannick Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the bay of Honduras, and other places of the territory of Spain in that part of the world, four months after the ratification of the present treaty: and his Catholick Majesty shall not permit his Britannick Majesty's subjects, or their workmen, to be disturbed or molested under any pretence whatsoever in the said places, in their occupation of cutting, loading, and carrying away logwood; and for this purpose they may build without hindrance, and occupy, without interruption, the houses and magazines necessary for them, for their families, and for their effects: and his Catholick Majesty assures to them, by this article, the full enjoyment of those advantages and powers on the Spanish coasts and territories, as above stipulated, immediately after the ratification of the present treaty.

XVIII. His Catholick Majesty desists, as well for himself as for his successors, from all pretension which he may have formed in favour of the Guipuscoans, and other his subjects, to the right of fishing in the neighbourhood of the island of Newfoundland.

XIX. The King of Great Britain shall restore to Spain all the territory which he has conquered in the island of Cuba, with the fortress of the Havannah; and this fortress, as well as all the other fortresses of the said island, shall be restored in the same condition they were in when conquered by his Britannick Majesty's arms, provided that his Britannick Majesty's subjects who shall have settled in the said island, restored to Spain by the present treaty, or those who shall have any commercial affairs to settle there, shall have liberty to sell their lands and their estates, to settle their affairs, recover their debts, and to bring away their effects, as well as their persons, on board vessels which they shall be permitted to send to the said island restored as above, and which shall serve for that use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts or of criminal prosecutions: And for this purpose, the term of eighteen months is allowed to his Britannick Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty: but as the liberty granted to his Britannick Majesty's subjects, to bring away their persons and their effects, in vessels of their nation, may be liable to abuses if precautious were not taken to prevent them; it has been expressly agreed between his Britannick Majesty and his Catholick Majesty, that the number of English vessels which shall have leave to go to the said island restored to Spain shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a fixed time; and shall make one voyage only; all the effects belonging to the English being to be embarked at the same time: it has been farther agreed, that his Catholick Majesty shall cause the necessary passports to be given to the said vessels; that for the greater security, it shall be allowed to place two Spanish clerks or guards in each of the said vessels, which shall be visited in the landing places and ports of the said island restored to Spain, and that the merchandize which shall be found therein shall be confiscated.

XX. In consequence of the restitution stipulated in the preceding article, his Catholick Majesty cedes and guaranties, in full right, to his Britannick Majesty, Florida, with Fort St. Augustin, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the East or to the South East of the River Mississippi. And, in general, every thing that depends on the said countries and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholick King and the Crown of Spain have had till now over the said countries, lands, places, and their inhabitants; so that the Catholick King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample manner and form. His Britannick Majesty agrees, on his side, to grant to the inhabitants of the countries above ceded, the liberty of the Catholick religion: he will, consequently, give the most express and the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites

of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the Spanish inhabitants, or others who had been subjects of the Catholick King in the said countries, may retire, with all safety and freedom, wherever they think proper; and may sell their estates, provided it be to his Britannick Majesty's subjects, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions: the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. It is moreover stipulated, that his Catholick Majesty shall have power to cause all the effects that may belong to him, to be brought away, whether it be artillery or other things.

* * * * * *

XXII. All the papers, letters, documents, and archives, which were found in the countries, territories, towns and places that are restored, and those belonging to the countries ceded, shall be, respectively and *bonâ fide*, delivered, or furnished at the same time, if possible, that possession is taken, or, at latest, four months after the exchange of the ratifications of the present treaty, in whatever places the said papers or documents may be found.

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## VII

## THE ROYAL PROCLAMATION, 7 OCTOBER, 1763

[Trans.: Shortt and Doughty.]

George R.

WHEREAS WE have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace concluded at Paris, the 10th day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great Seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.:

First—The Government of Quebec, bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45. Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly—The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River, to the Northward by a Line drawn from that part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all islands within Six Leagues of the Sea Coast.

Thirdly—The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast, from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi; to the Northward by a line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly—The Government of Grenada, comprehending the Island of that

name, together with the Grenadines, and the Islands of Dominico, St. Vincent's, and Tobago.

And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands, We have thought fit, with the advice of our said Privy Council, to put all that Coast, from the River St. John's to the Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia, all the Lands lying between the Rivers Alatamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling our said new Governments, that our loving subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof, We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People, so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and restrictions as are used in other Colonies; and in the mean time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.[1]

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies, upon the Continent full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgements, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and approbation of the Conduct and bravery of the Officers and Soldiers of our Armies, and to reward the same, We do hereby command and impower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to

[1] For a contemporary comment on this section, see below, No. XXII.

the same Quit-Rents, as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement, viz.:

| | |
|---|---|
| To every Person having the Rank of a Field Officer | 5,000 Acres |
| To every Captain | 3,000 Acres |
| To every Subaltern or Staff Officer | 2,000 Acres |
| To every Non-Commission Officer | 200 Acres |
| To every Private Man | 50 Acres |

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the time of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to our Interests, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.—We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor, or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians; in order therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as we or they shall think proper to give for that Purpose; And we do, by the Advice of our Privy Council, declare and enjoin,

that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or the Commander in Chief of any of Our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James's, the 7th Day of October, 1763, in the Third Year of our Reign.[1]

GOD SAVE THE KING

[1] On the Proclamation see Alvord, C. W., 'The Proclamation of 1763' (*Michegan Historical Society's Publications*, vol. 36, pp. 20 ff.); *The Mississipi Valley in British Politics* (2 vols., Cleveland, 1917).

# THIRD PERIOD

## 1763–1774

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## 1763–1774

During the Third Period the government was carried on by a loose interpretation of the Proclamation of 1763 and by various instructions given to the governors. Of the latter only those are printed which are of importance. The constitutional arrangement, pending the giving of representative institutions, was almost similar to that in a 'crown colony'.

From the very beginning of this period difficulties began. The presence of British settlers in Canada alien to the Canadians in race, speech, and religion complicated the situation. They took up a position of superiority which irritated Murray and Carleton. Their demands for a strict interpretation of the Proclamation of 1763 in connexion with law and justice, and for a house of assembly in which the Canadians should not be represented, fill the documents of the period. In this section are printed documents which illustrate various attempts (i) to interpret the Proclamation of 1763; (ii) to obtain a house of assembly; and (iii) several dispatches are added which throw light on the chaotic state of the administration of law and on the general difficulties with which the officials met in carrying on the government. Out of these difficulties came efforts to improve conditions. Ordinances and various reports to the British government illustrate these efforts. The period closes with the debates on the Quebec Act, which received the royal assent on June 22, 1774. From these debates liberal selections have been made.

For carefully documented accounts of the period see Chester Martin, *Empire and Commonwealth*, pp. 94 ff. (Oxford, 1929), and A. L. Burt, 'The Problem of Government, 1760–1774,' in *Cambridge History of the British Empire*, vol. vi, ch. vi (Cambridge, 1930).

## VIII

## INSTRUCTIONS TO GOVERNOR MURRAY, 7 DECEMBER, 1763[1]

[Trans.: Shortt and Doughty.]

George R.

Instructions to Our Trusty and Wellbeloved James Murray, Esq., Our Captain General and Governor in Chief in and over our Province of Quebec in (L.S.) America, and of all our Territories dependent thereupon. Given at Our Court of St. James's the seventh Day of December, 1763, in the Fourth Year of Our Reign.

1. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting You Our Captain General and Governor in Chief in and over Our Province of Quebec in America, bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John to the South End of the Lake Nipissin; from whence the said Line crossing the River St. Lawrence and the Lake Champlain in forty five Degrees of North Latitude, passes along the High Lands, which divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John: You are therefore to take upon You the Execution of the Office and Trust We have reposed in You, and the Administration of Government, and to do and execute all Things in due manner that shall belong to your Command, according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain, and these Our Instructions to You, or according to such further Powers and Instructions as shall at any Time hereafter be granted or appointed You under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

2. And You are, with all due Solemnity, to cause Our said Commission to be published at Quebec, which We do appoint to be the Place of your Residence and the principal Seat of Government, in the Districts of Montreal and Trois Rivieres, and in such other parts of your Government as You shall think necessary and expedient, as soon as possible; which being done, You are in the next place to nominate and establish a Council for Our said Province, to assist You in the Administration of Government, which Council is, for the present, to be composed of the Persons, Whom We have appointed to be Our Lieutenant Governors of Montreal and Trois Rivieres, Our Chief Justice of Our said Province, and the Surveyor General of Our Customs in America for the Northern District, and Eight other Persons to be chosen by You from amongst the most considerable of the Inhabitants of, or Persons of Property in Our said Province; which Persons so nominated and appointed by You as aforesaid, (Five of which We do hereby appoint to be a Quorum), are to be Our Council for Our said Province, and to have and enjoy all the Powers, Privilege and Authority usually exercised and enjoyed by the Members of Our Councils in Our other Plantations, and also such others as are contained in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to You; and they shall meet together at such Time or Times, Place or Places, as You, in your Discretion, shall think necessary and expedient: It is nevertheless Our Will and Pleasure, that the said Chief Justice, or Surveyor General of Our Customs, shall not be capable of taking the Administration of the Government upon the Death or Absence of You Our Governor, or the Commander in Chief for the Time Being.

3. And You are forthwith to call Our said Council together, or such of them as can be conveniently assembled, and to cause Our said Commission to You to be read at such Meeting; which being done, You shall then take yourself, and also administer to Our Lieutenant Governors respectively, and to the Members of Our said Council, the Oaths mentioned in an Act, passed in the first Year of

[1] Murray's commission as civil governor was dated November 21, 1763. He did not take up his new position, however, till August, 1764. Doubtless this delay was due to the provisions of the fourth section of the peace of Paris (*q.v.*).

the Reign of His Majesty King George the First, intituled, "An Act for the "further Security of His Majesty's Person and Government, and the Succession "of the Crown in the Heirs of the late Princess Sophia, being Protestants, and "for extinguishing the Hopes of the pretended Prince of Wales, and his open and "secret Abettors;"—as also to make and subscribe, and cause them to make and subscribe, the Declaration mentioned in an Act of Parliament made in the Twenty fifth Year of the Reign of King Charles the Second, intituled, "An Act "for preventing Dangers which may happen from Popish Recusants." And You and every one of Them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice;—and You are also to take the Oath required by an Act passed in the seventh and eighth Years of the Reign of King William the Third to be taken by Governors of Plantations, to do their utmost that the Laws relating to the Plantations be observed.

4. And You are forthwith to transmit unto Our Commissioners for Trade and Plantations, in order to be laid before Us for Our Approbation or Disallowance, the Names of the Members of the Council so to be appointed by You, as aforesaid; as also a list of the Names and Characters of Eight other Persons in Our said Province, whom You judge properly qualified to serve in that Station; to the End that, if any of the Persons appointed by You, as aforesaid, shall not be approved and confirmed by Us, under Our Signet and Sign Manual, the Place or Places of such Persons so disapproved may be forthwith supplied from the said List, or otherwise, as We shall think fit. . . .

9. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite; as likewise all such others, from time to time, as You shall find convenient for Our Service to be imparted to them.

10. You are to permit the Members of Our said Council to have and enjoy Freedom of Debate and Vote, in all affairs of public Concern that may be debated in Council.

11. And whereas it is directed, by Our Commission to You under Our great Seal, that so soon as the Situation and Circumstances of Our said Province will admit thereof, you shall, with the Advice of Our Council, summon and call a General Assembly of the Freeholders in Our said Province; You are therefore, as soon as the more pressing Affairs of Government will allow to give all possible attention to the carrying this important Object into Execution: But, as it may be impracticable for the present to form such an Establishment, You are in the mean time to make such Rules and Regulations, by the Advice of Our said Council, as shall appear to be necessary for the Peace, Order and good Government of Our said Province, taking Care that nothing be passed or done, that shall any ways tend to effect the Life, Limb or Liberty of the Subject, or to the imposing any Duties or Taxes: and that all such Rules and Regulations be transmitted to Us, by the first Opportunity after they are passed and made, for Our Approbation or Disallowance. And it is Our Will and Pleasure, that when an Assembly shall have been summoned and met, in such manner as You, in your Discretion, shall think most proper, or shall be hereafter directed and appointed, the following Regulations be carefully observed in the framing and passing all such Laws, Statutes and Ordinances as are to be passed by You, with the Advice and Consent of Our said Council and Assembly; viz.:

That the Style of Enacting the said Laws, Statutes and Ordinances be by the Governor, Council and Assembly and no other;—

That each different Matter be provided for by a different Law, without including in one and the same Act such Things as have no proper Relation to each other;—

That no Clause be inserted in any Act or Ordinance, which shall be foreign to what the Title of it imports; and that no perpetual Clause be part of any temporary Law;—

That no Law or Ordinance whatever be suspended, altered, continued, revived or repealed by general Words; but that the Title and Date of such Law or Ordinance be particularly mentioned in the enacting part;—

That no Law or Ordinance, respecting private Property, be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known; nor without a saving of the Right of Us, Our Heirs and Successors, and of all Bodies politic and corporate, and of all other Persons, except such as are men-

tioned in the said Law or Ordinance, and those claiming by, from, and under them; and before such Law or Ordinance is passed, Proof must be made before You, in Council, and entered in the Council Books, that Public Notification was made of the Party's Intention to apply for such Act in the several Parish Churches, where the Lands in Question lie, for three Sundays at least successively before any such Law or Ordinance shall be proposed; and You are to transmit, and annex to the said Law, or Ordinance, a Certificate under your hand, that the same passed through all the Forms abovementioned;—

That in all Laws or Ordinances for levying Money, or imposing Fines, Forfeitures or Penalties, express mention be made, that the same is granted or reserved to Us, our Heirs and Successors, for the public Uses of the said Province, and the Support of the Government thereof, as by the said Law, or Ordinance shall be directed; and that a Clause be inserted, declaring, that the Money arising by the Operation of the said Law, or Ordinance shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury, or Our High Treasurer for the time being, and audited by Our Auditor General of Our Plantations, or his Deputy;—

That all such Laws, Statutes, and Ordinances be transmitted by You within three Months after their passing, or sooner, if Opportunity offers, to Our Commissioners for Trade and Plantations: that they be fairly abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive of a new Law, declaratory of a former Law, or does repeal a Law then before in being; and You are also to transmit, in the fullest manner the Reasons and Occasion for enacting such Laws, or Ordinances, together with fair Copies of the Journals of the Proceedings of the Council and Assembly, which You are to require from the Clerks of the said Council and Assembly.

12. And to the end that nothing may be passed or done to the Prejudice of the true Interests of this Our Kingdom, the just Rights of Us, Our Heirs and Successors, or the Property of Our Subjects; it is Our express Will and Pleasure, that no Law whatever, which shall in any wise tend to affect the Commerce or Shipping of this Kingdom, or which shall any ways relate to the Rights and Prerogative of Our Crown, or the Property of Our Subjects, or which shall be of an unusual or extraordinary Nature, be finally ratified and assented to by You, until You shall have first transmitted a Draught of Such Law, and shall have received Our Directions thereupon, unless You take care, that a Clause be inserted, suspending and deferring the Execution thereof, until Our Pleasure is known concerning the same.

13. And whereas Laws have formerly been enacted in several of Our Plantations in America for so short a Time, that Our Royal Assent or Refusal thereof could not be had before the Time, for which such Laws were enacted, did expire; You shall not give your Assent to any Law, that shall be enacted for a less Time than two Years, except in Cases of imminent Necessity, or immediate temporary Expediency; and You shall not re-enact any Law, to which Our Assent shall have been once refused, without express Leave for that purpose first obtained from Us, upon a full Representation by You to be made to Our Commissioners for Trade and Plantations, in order to be laid before Us, of the Reasons and Necessity for passing such Law; nor give your Assent to any Law for repealing any other Law, which shall have passed in your Government, and shall have received Our Royal Approbation, unless You take care that there be a Clause inserted therein, suspending and deferring the Execution thereof, until Our Pleasure shall be known concerning the same. . . .

15. And whereas the Members of several Assemblies in the Plantations have frequently assumed to themselves Privileges no ways belonging to them, especially of being protected from Suits at Law during the Term they remain of the Assembly, to the great Prejudice of their Creditors and the Obstruction of Justice; and some Assemblies have presumed to adjourn themselves at Pleasure, without leave from Our Governor first obtained; and Others have taken upon them the sole framing of Money Bills, refusing to let the Council alter or amend the same; all which practices are very detrimental to Our Prerogative; If therefore You find, that the Members of the Assembly of Our Province of Quebec insist upon any of the said Privileges, You are to signify to them that it is Our express Will and Pleasure, that You do not allow any Protection to any Member of the Council or Assembly, further than in their Persons, and that only during

the Sitting of the Assembly; and that You do not allow them to adjourn themselves otherwise than de die in diem, except Sundays and Holy-days, without Leave from You, or the Commander in Chief for the time being, first obtained; It is also Our further Pleasure, that the Council have the like Power of framing Money Bills as the Assembly.

16. And whereas by Our aforesaid Commission under Our Great Seal of Great Britain, You are authorized and impowered, with the Advice and Consent of our Council, to constitute and appoint Courts of Judicature and Justice; it is therefore our Will and Pleasure, that You do, as soon as Possible, apply your Attention to these great and important Objects; and that, in forming the necessary Establishments for this purpose, You do consider what has taken place in this respect in Our other Colonies in America, more particularly in Our Colony of Nova Scotia.[1]

17. And whereas it is for the Ease, Satisfaction and Benefit of all Our Subjects, that Appeals should be allowed, in all Civil Causes, from the Courts in Our Plantations; it is therefore Our Will and Pleasure, that, when the several Courts and Offices necessary for the Administration of Justice shall have been settled, appointed and confirmed, in consequence of the Power vested in You by Our Commission under Our Great Seal and by these Our Instructions, You do, as near as different Circumstances will admit, conform yourself to the Regulations prescribed in the Instructions given to Our Governor of Nova Scotia in respect to such Appeals, Copies of which Instructions are hereunto annexed.[2]

18. You are, with the Advice and consent of Our Council in the Province under your Government, to take especial Care to regulate all Salaries and Fees belonging to Places, or paid upon Emergencies, that they may be within the Bounds of Moderation, and that no Exaction be made on any Occasion whatsoever, as also that tables of all Fees be publickly hung up in all Places where such Fees are to be paid; and You are to transmit Copies of all such Tables of Fees to Our Commissioners for Trade and Plantations, in order to be laid before Us. . . .

20. You shall not appoint any Person to be a Judge or Justice of the Peace, without the Advice and Consent of the Majority of the Members of Our Council, present in Council; nor shall You execute yourself, or by Deputy, any of the said Offices; and it is Our further Will and Pleasure, that all Commissions, to be granted by You, to any Person or Persons to be Judges or Justices of the Peace, or other necessary Officers, be granted during Pleasure only.

21. You shall not displace any of the Judges, Justices of Peace, or other Officers or Ministers, without good and sufficient Cause which You shall signify in the fullest and most distinct manner to Our Commissioners for Trade and Plantations, in order to be laid before Us, by the first Opportunity after such Removals.

22. And whereas frequent Complaints have heretofore been made of great Delays and undue Proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered; and it being of the greatest Importance to Our Service, and to the Welfare of Our Plantations, that Justice be everywhere speedily and duly administered, and that all Disorders, Delays, and other undue Practices in the Administration thereof, be effectually prevented; We do particularly require You to take especial Care, that in all Courts, where You are authorized to preside, Justice be impartially administered; and that in all other Courts, established within Our said Province, all Judges, and other Persons therein concerned, do likewise perform their several Duties without any Delay or Partiality.

23. You are to take Care, that all Writs be issued in Our Name throughout the Province under your Government.

24. Whereas there are several Offices in Our Plantations granted under the Great Seal of Great Britain, and Our Service may be very much prejudiced by reason of the Absence of the Patentees, and by their appointing Deputies not fit to officiate in their Stead; You are therefore to inspect such of the said Offices as are in the Province under your Government, and to enquire into the Capacity

[1] In carrying out this scheme Murray was aided by the fact that his attorney-general was George Suckling, a member of the first Nova Scotian assembly, who had practised law in the Nova Scotian courts. Suckling and chief justice William Gregory drew up the ordinance of September 17, 1764 (No. IX), and on several subsequent occasions Suckling assisted developments on the strength of his knowledge of Nova Scotian precedents (e.g. *Minutes of Legislative Council*, A, October 23, November 6, 1764; February 26, 1765).

[2] The 48th and 49th Articles of the instructions issued to Lawrence, governor of Nova Scotia, and dealing with appeals were enclosed for Murray's guidance. They are printed in *Report of the Canadian Archives*, 1904, pp. 210 ff.

and behaviour of the Persons exercising them, and to report thereupon, to Our Commissioners for Trade and Plantations, what you think fit to be done or altered in relation thereunto; and you are, upon the Misbehaviour of any of the said Patentees or their Deputies, to suspend them from the Execution of their Office, till You shall have represented the whole Matter unto Us, and received Our Directions therein; and in case of the Death of any such Deputy, it is Our express Will and Pleasure, that You take Care that the Person appointed to execute the Place, until the Patentee can be informed thereof and appoint another Deputy, do give sufficient Security to the Patentee, or, in case of Suspension, to the Person suspended, to be answerable to him for the Profits accruing during such Interval by Death, or during Such Suspension, in case We shall think fit to restore the Person Suspended to his Place again. It is nevertheless Our Will and Pleasure, that the Person executing the Place during such Interval by Death or Suspension, shall, for his Encouragement, receive the same Profits as the Person dead, or suspended did receive; And it is Our further Will and Pleasure, that, in case of a Suspension of a Patentee, the Person appointed by you to exercise the Office during such Suspension, shall receive a Moiety of the Profits which would otherwise become due to such Patentee, giving Security to such Patentee to be answerable to him for the other Moiety, in case We shall think fit to restore him to his Office again; And it is Our further Will and Pleasure, that You do countenance and give all due Encouragement to all Our Patent Officers in the Enjoyment of their legal and accustomed Fees, Rights, Privileges and Emoluments, according to the true Intent and Meaning of their Patents....

28. And whereas We have stipulated, by the late Definitive Treaty of Peace concluded at Paris the 10th Day of February, 1763, to grant the Liberty of the Catholick Religion to the Inhabitants of Canada, and that We will consequently give the most precise and most effectual Orders, that Our new Roman Catholick Subjects in that Province may profess the Worship of their Religion, according to the Rites of the Romish Church, as far as the Laws of Great Britain permit; It is therefore Our Will and Pleasure, that you do, in all things regarding the said Inhabitants, conform with great Exactness to the Stipulations of the said Treaty in this respect.

29. You are, as soon as possible, to summon the Inhabitants to meet together, at such Time or Times, Place or Places, as you shall find most convenient, in order to take the Oath of Allegiance, and make and subscribe the Declaration of Abjuration mentioned in the aforesaid Act passed in the first Year of the Reign of King George the First, for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the Late Princess Sophia, being Protestants, and for extinguishing the Hopes of the Pretended Prince of Wales, and his open and secret Abettors; which Oath shall be administered to them by such Person or Persons as you shall commissionate for such Purpose; and in case any of the said French Inhabitants shall refuse to take the said Oath, and make and subscribe the Declaration of Abjuration, as aforesaid, You are to cause them forthwith to depart out of Our said Government.

30. And it is Our further Will and Pleasure, that all such Inhabitants, professing the Religion of the Romish Church, do, at all such Meetings, or at such other Time or Times as You shall think proper, and in the Manner you shall think least alarming and inconvenient to the said Inhabitants, deliver in upon Oath an exact Account of all Arms and Ammunition, of every Sort in their actual Possession, and so, from time to time, of what they shall receive into their Possession, as aforesaid.

31. You are as soon as possible to transmit to Us, by Our Commissioners for Trade and Plantations, an exact and particular Account of the Nature and Constitution of the several Religious Communities of the Romish Church, their Rights, Claims, Privileges and Property, and also the Number, Situation and Revenue of the several Churches heretofore established in Our said Province, together with the Number of Priests or Curates officiating in such Churches.

32. You are not to admit of any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction whatsoever in the Province under your Government.[1]

33. And to the End that the Church of England may be established both in Principles and Practice, and that the said Inhabitants may by Degrees be induced

[1] For the history of the early ecclesiastica government of the Roman catholic church in British Canada, see Gosselin, *L'Église du Canada après la Conquête* (Quebec, 1916).

to embrace the Protestant Religion, and their Children be brought up in the Principles of it; We do hereby declare it to be Our Intention, when the said Province shall have been accurately surveyed, and divided into Townships, Districts, Precincts or Parishes, in such manner as shall be hereinafter directed, all possible Encouragement shall be given to the erecting Protestant Schools in the said Districts, Townships and Precincts, by settling, appointing and allotting proper Quantities of Land for that Purpose, and also for a Glebe and Maintenance for a Protestant Minister and Protestant School Masters; and you are to consider and report to Us, by Our Commissioners for Trade and Plantations, by what other Means the Protestant Religion may be promoted, established and encouraged in Our Province under your Government.

34. And You are to take especial Care, that God Almighty be devoutly and duly served throughout your Government, the Book of Common Prayer, as by Law established, read each Sunday and Holyday, and the blessed Sacrament administered according to the Rites of the Church of England.

35. You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London,[1] of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation; And if any Person hereafter preferred to a Benefice shall appear to you to give Scandal, either by his Doctrine or Manners, you are to use the best Means for his Removal.

36. You are to give Orders forthwith, that every Orthodox Minister within your Government be one of the Vestry in his respective Parish; and that no Vestry be held without him, except in case of Sickness, or, after Notice of a Vestry summoned, he omit to come.

37. And to the End that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be, We do think fit, that You give all Countenance and Encouragement to the Exercise of the same, excepting only the Collating to Benefices, granting Licences for Marriage, and Probates of Wills, which We have reserved to You, Our Governor, and to the Commander in Chief of Our said Province for the Time being.

38. And We do further direct, that no Schoolmaster who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School, without the Licence of the said Lord Bishop of London; and that no other Person now there, or that shall come from other Parts, shall be admitted to keep School in your Government, without your Licence first obtained.

39. And You are to take especial Care, that a Table of Marriages, established by the Canons of the Church of England, be hung up in all Places of publick Worship, according to the Rites of the Church of England. . . .

41. And whereas it is stipulated by the aforesaid Treaty concluded at Paris the 10th day of February, 1763, that the French Inhabitants, or Others, who have been Subjects of the Most Christian King in Canada, may retire with all Freedom and Safety wherever they shall think proper, and may sell their Estates, provided it be to Our Subjects, and bring away their Effects, as well as their Persons, without being restrained in their Emigration under any Pretence whatsover, except that of Debts, or criminal Prosecution, and that the Time limited for the Emigration shall be fixed to the Space of Eighteen Months, to be computed from the Day of the Exchange of the Ratifications of the Treaty; You are therefore in all things to conform yourself to this Stipulation, and to take care, that such of the French Inhabitants as intend to remove within the Time limited [2] be not obstructed or impeded, provided they do not sell their Estates to Others than His Majesty's Subjects, and that, so long as they remain under your Government, they do in all things conform thereto in like manner as Our other Subjects.

42. And it is Our further Will and Pleasure, that all and every the French Inhabitants in Our said Province, who are now possessed of Lands within the said Province, in Virtue of Grants or Concessions made before the signing of the Preliminary Articles of Peace on the third Day of November, 1762; do within such limited Time as You in your Discretion shall think fit, register the several

[1] For the history of the church of England in Canada, see Mockridge, C. H., *The Bishops of the Church of England in Canada and Newfoundland* (1896).

[2] For a discussion of the numbers who emigrated, see Munro, W. B., *The Seigniorial System in Canada* (Oxford, 1907).

Grants or other Deeds or Titles, by which they hold or claim such Lands, in the Secretary's Office; which said Grants, Deeds or other Titles, shall be entered at large in the said Office, so that the particular Quantity of Land, its Site and Extent, the Conditions upon which it is granted, either as to Rents, Services, or Cultivation, may appear fully and at length.

43. And in case it shall appear, upon a strict and accurate Examination of the said Grants and Title Deeds, to be taken in such manner as You shall think proper, that any of the Grantees, or Persons claiming Lands under such Grants and Title Deeds, are in possession of more Land than is contained within such Grants or other Concessions; or that the Terms and Conditions, upon which the Lands were granted, have not been complied with, agreeable to what is stipulated in such Grants or Concessions; It is Our Will and Pleasure, that you forthwith represent the same to Us, by Our Commissioners for Trade and Plantations, to the End that you may receive such Directions thereupon, as the Nature and Circumstances of the Case shall appear to require. . . .

61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means You can for conciliating their Affections, and uniting them to our Government, reporting to Us by Our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid, on pain of Our Displeasure, all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under Our Protection, without Our especial Leave for that Purpose first obtained; It is Our express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.

63. You are to use your best Endeavours in improving the Trade of those Parts, by settling such Orders and Regulations therein, with the Advice of Our said Council, as may be most acceptable to the Generality of the Inhabitants. And it is Our Express Will and Pleasure, that you do not, upon any Pretence whatever, upon pain of Our highest Displeasure, give your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades, which are hurtful and prejudicial to this Kingdom; and that You do use your utmost Endeavours to discourage, discountenance and restrain any Attempts which may be made to set up such Manufactures, or establish any such Trades.

64. Whereas by the 5th and 6th Articles of the Treaty of Peace and Neutrality in America, concluded between England and France the 6th–16 Day of November, 1686, the Subjects and Inhabitants of each Kingdom are prohibited to trade and fish in all Places possessed, or which shall be possessed by the other in America; and if any Ships shall be found trading contrary to the said Treaty, upon due Proof the said Ships shall be confiscated; but in case the Subjects of either King shall be forced by Stress of Weather, Enemies, or other Necessity into the Ports of the other in America, they shall be treated with Humanity and Kindness, and may provide themselves with Victuals, and other Things necessary for their Sustenance, and the Reparation of their ships, at reasonable Rates; provided they do not break bulk, nor carry any Goods out of their Ships, exposing them for Sale, nor receive any Merchandize on board, under Penalty of Confiscation of Ship and Goods; It is therefore Our Will and Pleasure, that You signify to Our Subjects under your Government the Purport and Intent of the abovesaid two Articles; and that you take particular Care, that none of the French Subjects be allowed to trade from their said Settlements to the Province under your Government, or to fish upon the Coast thereof.

65. And it is Our Will and Pleasure, that You do not Dispose of any Forfeitures or Escheats to any Person, until the Sheriff, or other proper Officer, have made Enquiry, by a Jury upon their Oaths, into the true Value thereof, nor until you have transmitted to Our Commissioners of Our Treasury, and to Our Com-

missioners for Trade and Plantations, a particular Account of such Forfeitures and Escheats, and the Value thereof. And you are to take Care, that the Produce of such Forfeitures and Escheats, in case We shall think proper to give You Directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province, and a full Account transmitted to Our Commissioners of Our Treasury, or Our High Treasurer for the Time being, and to Our Commissioners for Trade and Plantations, with the Names of the Persons to whom disposed. . . .

68. Whereas great Inconveniences have happened heretofore by Merchant Ships and other Vessels in the Plantations wearing the Colours borne by Our Ships of War, under Pretence of Commissions granted to them by the Governors of the said Plantations, and, by trading under those Colours, not only amongst Our own Subjects, but also those of other Princes and States, and committing divers Irregularitys, they may very much dishonour Our Service; For preventing thereof You are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours than such as are described in an Order of Council of the seventh of January, 1730, in relation to Colours to be worn by all Ships and Vessels, except Our Ships of War.

69. And whereas there have been great Irregularitys in the manner of granting Commissions in the Plantations to private Ships of War, You are to govern yourself, whenever there shall be Occasion, according to the Commissions and Instructions granted in this Kingdom; But you are not to grant Commissions of Marque or Reprizal against any Prince or State, or their Subjects, in Amity with Us, to any Person whatsoever, without Our special Command.

70. Whereas We have been informed that, during time of War, Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private Persons to their correspondents in Great Britain, taken on board Ships coming from the Plantations, which has been of dangerous Consequence; Our Will and Pleasure therefore is, that you signify to all Merchants, Planters and Others, that they be very cautious, in time of War, whenever that shall happen, in giving any Accounts by Letters of the public State and Condition of Our Province under your Government; And you are further to give Directions to all Masters of Ships, or other Persons to whom you may entrust your Letters, that they put such Letters into a Bag, with a sufficient weight to sink the same immediately in Case of imminent danger from the Enemy; And you are also to let the Merchants and Planters know, how greatly it is for their Interests that their Letters should not fall into the Hands of the Enemy, and therefore that they should give like Orders to Masters of Ships in relation to their Letters; And you are further to advise all Masters of Ships, that they do sink all Letters, in case of dangers, in the Manner before mentioned.

71. And whereas, in Time of War, the Merchants and Planters in Our Plantations in America did correspond and trade with Our Enemies, and carry Intelligence to them, to the great Prejudice and Hazard of Our said Plantations; You are therefore by all possible Methods to endeavour to hinder such Trade and Correspondence in Time of War.

72. And You are to report to Us, by Our Commissioners for Trade and Plantations,—

What is the Nature of the Soil and Climate of the Province under your Government, If it differs in these Circumstances from Our other Northern Colonies, in what that Difference consists? And what beneficial Articles of Commerce the different Parts of it are capable of producing?

What Rivers there are, and of what Extent and Convenience to the Planters?

What are the principal Harbours; how situated, and of what Extent; and what is the Depth of Water, and Nature of the Anchorage in each of them?

What Quantity of Land is now under actual Improvement and Settlement?

What are the chief Articles of Produce and Culture; the annual Amount of the Quantity of each; and upon what Terms and Conditions the Inhabitants hold their Lands, either of Cultivation, Rent, or Personal Service?

What is the Quantity, Nature and Property of the Land uncultivated; how much of it is capable of Culture; and what part thereof is private Property?

What is the Number of Inhabitants, Whites and Blacks, distinguishing each? What Number of the Former is capable of bearing Arms, and what Number of the Latter is annually necessary to be supply'd in proportion to the Land cultivated?

What was the Nature, Form and Constitution of the Civil Government; what Judicatures were there established, and under what Regulations did the French Inhabitants carry on their Commerce?

73. You are from time to time to send unto Us, by Our Commissioners for Trade and Plantations, as aforesaid, an Account of the Increase and Decrease of the Inhabitants, Whites and Blacks, and also an Account of all Persons born, christened and buried.

74. Whereas, it is absolutely necessary, that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War that are in each Plantation, as to the Forts and Fortifications there; and what more may be necessary to be built for the Defence and Security of the same; You are as soon as possible to prepare an Account thereof with relation to Our said Province in the most particular manner; And you are therein to express the present State of the Arms, Ammunition and other Stores of War, belonging to the said Province, either in public Magazines, or in the Hands of private Persons; together with the State of all Places, either already fortified, or that you judge necessary to be fortified for the Security of Our said Province; And you are to transmit the said Accounts to Our Commissioners for Trade and Plantations, as also a Duplicate thereof to Our Master General or principal Officers of Our Ordnance; Which Accounts are to express the Particulars of Ordnance, Carriages, Balls, Powder, and other Sorts of Arms and Ammunition in Our public Stores, and so from time to time of what shall be sent you, or bought with the public Money, and to specify the Time of the Disposal, and the Occasion thereof: And You are half yearly to transmit a general Account of the State of the Fortifications and Warlike Stores, specify'd in the matter above mentioned.

75. You are from time to time to give an Account, what strength your Neighbours have by Sea and Land, and of the Condition of their Plantations, and what Correspondence You keep with them.

76. And in case of any Distress of any other of Our Plantations, You shall, upon Application of the respective Governors thereof unto you, assist them with what Aid the Condition and Safety of Our Province under your Government can spare.

77. If anything shall happen, which may be of Advantage or Security to Our Province under your Government, which is not herein, or by your Commission provided for, We do hereby allow unto you, with the Advice and Consent of Our Council, to take Order for the present therein, giving unto Our Commissioners for Trade and Plantations speedy Notice thereof, in order to be laid before Us, that you may receive Our Ratification, if We shall approve the same—provided always, that you do not, by Colour of any Power or Authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein.

78. And whereas We have, by the second Article of these Our Instructions to you, directed and appointed that your chief Residence shall be at Quebec; you are nevertheless frequently to visit the other parts of your Government, in order to inspect the Management of all public Affairs, and thereby the better to take Care, that the Government be so administered, that no disorderly Practices may grow up contrary to Our Service and the Welfare of Our Subejcts.

79. And whereas great Prejudice may happen to Our Service, and the Security of the Province, by your Absence from those Parts, You are not, upon any Pretence whatsoever, to come into Europe, without having first obtained Leave for so doing from Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless in case of Sickness, You may go to South Carolina, or any other of Our Southern Plantations, and there stay for such Space as the Recovery of your Health may absolutely require.

80. And whereas We have thought fit by Our Commission to direct, that in case of your Death or Absence, and the Death or Absence of Our Lieutenant Governors of Montreal and Trois Rivieres, and in case there be at that time no Person within Our said Province, commissionated or appointed by Us to be Commander in Chief, that the Eldest Councillor, who shall be at the time of your Death or Absence, or at the Death or Absence of Our Lieutenant Governors, as aforesaid, residing within Our said Province under your Government, shall take upon him the Administration of Government, and execute Our said Commission and Instructions, and the several Powers and Authorities therein directed: It is

nevertheless Our express Will and Pleasure, that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that Purpose; And that he shall not remove or suspend any of the Members of Our Council, nor any Judges, Justices of the Peace, or other Officers Civil or military, without the Advice and Consent of at least seven of the Members of Our said Council, nor even then without good and sufficient Reasons for the same, which the said President is to transmit, signed by himself and the rest of Our said Council, to Our Commissioners for Trade and Plantations, by the first Opportunity in order to be laid before Us. . . .

82. And You are upon all Occasions to send unto Our Commissioners for Trade and Plantations only, a particular Account of all your Proceedings, and of the Conditions of Affairs within your Government, in order to be laid before Us; provided nevertheless, whenever any Occurrences shall happen within your Government of such a Nature and Importance as may require Our Immediate Directions by One of Our principal Secretaries of State, and also upon all Occasions and in all Affairs wherein you may receive Our Orders by One of Our principal Secretaries of State, you shall in all such Cases transmit to Our Secretary of State only an Account of all such Occurrences, and of your Proceedings relative to such Orders:—

G. R.

## IX

## ORDINANCE ESTABLISHING CIVIL COURTS, 1764 [1]

[Trans.: Shortt and Doughty.]

An ORDINANCE, for regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter-Sessions, Bailiffs, and other Matters relative to the Distribution of Justice in this Province.

Whereas it is highly expedient and necessary, for the well governing of His Majesty's good Subjects of the Province of *Quebec*, and for the speedy and impartial Distribution of Justice among the same, that proper Courts of Judicature, with proper Powers and Authorities, and under proper Regulations, should be established and appointed:

His Excellency the Governor, by and with the Advice, Consent and Assistance of His Majesty's Council, and by Virtue of the Power and Authority to him given by His Majesty's Letters Patent, under the Great Seal of *Great-Britain*, hath thought fit to Ordain and Declare; and his said Excellency, by and with the Advice, Consent and Assistance aforesaid, *Doth hereby Ordain and Declare*,

That a Superior Court of Judicature, or Court of King's Bench, be established in this Province, to sit and hold Terms in the Town of *Quebec*, twice in every Year, *viz.*: One to begin on the Twenty-first Day of *January*, called *Hillary* Term, the other on the Twenty-first Day of *June*, called *Trinity* Term.

In this Court His Majesty's Chief-Justice presides, with Power and Authority to hear and determine all criminal and civil Causes, agreeable to the Laws of *England*, and to the Ordinances of this Province; and from this Court an Appeal lies to the Governor and Council, where the Matter in Contest is above the Value of *Three Hundred Pounds* Sterling; and from the Governor and Council an Appeal lies to the King and Council, where the Matter in Contest is of the Value of *Five Hundred Pounds* Sterling or upwards,

In all Tryals in this Court, all His Majesty's Subjects in this Colony to be admitted on Juries without Distinction.[2]

And His Majesty's Chief-Justice, once in every Year, to hold a Court of Assize, and General Gaol-Delivery, soon after *Hillary* Term, at the Towns of *Montreal* and *Trois-Rivières*, for the more easy and convenient Distribution of Justice to His Majesty's Subjects in those distant Parts of the Province.

[1] This Ordinance was passed under the terms of the Proclamation of 1763 (No. VII) and of the Instructions to Murray (No. VIII). It was amended in 1766 (see No. XV).

[2] Murray explained this clause to the British government. He desired 'all subjects' to be eligible for jury-service, because (*a*) he did not consider it just to confine such service to the minority of English-speaking subjects in Canada, and (*b*) because he considered that if he did so many Canadians would emigrate. See No. X.)

And whereas an inferior Court of Judicature, or Court of Common-Pleas, is also thought necessary and convenient, *It is further Ordained and Declared, by the Authority aforesaid*, That an inferior Court of Judicature or Court of Common-Pleas, is hereby established, with Power and Authority, to determine all Property above the Value of *Ten Pounds*, with a Liberty of Appeal to either Party, to the Superior Court, or Court of King's Bench, where the Matter in Contest is of the Value of *Twenty Pounds* and upwards.

All Tryals in this Court to be by Juries, if demanded by either Party; and this Court to sit and hold two Terms in every Year at the Town of *Quebec*, at the same Time with the Superior Court, or Court of King's Bench. Where the Matter in Contest in this Court is above the Value of *Three Hundred Pounds* Sterling, either Party may (if they shall think proper) appeal to the Governor and Council immediately, and from the Governor and Council an Appeal lies to the King and Council, where the Matter in Contest is of the Value of *Five Hundred Pounds* sterling or upwards.

The Judges in this Court are to determine agreeable to Equity, having Regard nevertheless to the Laws of *England*, as far as the Circumstances and present Situation of Things will admit, until such Time as proper Ordinances for the Information of the People can be established by the Governor and Council, agreeable to the Laws of *England*.

The *French* Laws and Customs to be allowed and admitted in all Causes in this Court, between the Natives of this Province, where the Cause of Action arose before the first Day of *October*, One Thousand Seven Hundred and Sixty-Four.

The first Process of this Court to be an Attachment against the Body.

An Execution to go against the Body, Lands or Goods of the Defendant.

*Canadian* Advocats, Procters, &c., may practise in this Court.

And whereas it is thought highly necessary for the Ease, Convenience and Happiness of all His Majesty's loving Subjects, That Justices of the Peace should be appointed for the respective Districts of this Province, with Power of determining Property of small Value in a summary way, *It is therefore further Ordained and Declared, by the Authority aforesaid*, and full Power is hereby Given and Granted to any one of His Majesty's Justices of the Peace, within their respective Districts, to hear and finally determine in all Causes or Matters of Property, not exceeding the Sum of *Five Pounds* current Money of *Quebec*, and to any two Justices of the Peace, within their respective Districts, to hear and finally determine in all Causes or Matters of Property, not exceeding the Sum of *Ten Pounds* said Currency, which Decisions being within, and not exceeding the aforesaid Limitation, shall not be liable to an Appeal; and also full Power is, by the Authority aforesaid, Given and Granted, to any three of said Justices of the Peace to be a Quorum, with Power of holding Quarter-Sessions in their respective Districts every three Months, and also to hear and determine all Causes and Matters of Property which shall be above the Sum of *Ten Pounds*, and not exceeding *Thirty Pounds* current Money of *Quebec*, with Liberty of Appeal to either Party to the Superior Court, or Court of King's-Bench: *And it is hereby Ordered*, That the aforesaid Justices of the Peace do issue their Warrants, directed to the Captains and other Officers of the Militia in this Province, to be by them executed, until the Provost-Marshal, legally authorised by His Majesty, shall arrive, and other inferior Officers be appointed for that Purpose; all Officers, Civil and Military, or other His Majesty's loving Subjects, are hereby commanded and required to be aiding and assisting to the said Justices and Officers of Militia in the due Execution of their Duty. *And it is further Ordered and Directed, by the Authority aforesaid*, That two of the said Justices of the Peace do sit weekly in Rotation, for the better Regulation of the Police, and other Matters and things in the Towns of *Quebec* and *Montreal*, and that the Names of the Justices who are to sit each Week, be posted up on the Door of the Session-House by the Clerk of the Peace, two Days before their respective Days of Sitting, that all Persons may know to whom to apply for Redress.

And whereas there are not at present a sufficient Number of Protestant Subjects, resident in the intended District of *Trois-Rivières*, qualified to be Justices of the Peace, and to hold Quarter-Sessions, *It is therefore further Ordained and Declared, by the Authority aforesaid*, That from henceforth this Province shall be divided into two Districts, to be known and called by the Names of *Quebec* and *Montreal*, for the Time being, and until there may be a competent Number of Persons, settled at or near *Trois-Rivières*, duly qualified to execute the Office of

Justices of the Peace, and the Power of holding such Quarter-Sessions abovementioned, or until His Majesty's Pleasure be known in that Behalf; and that the said two Districts be divided and bounded by the River *Godfroy* on the South, and the River *St. Maurice* on the North Side.

And whereas it is thought very expedient and necessary, for the speedy and due Execution of the Laws, and for the Ease and Safety of His Majesty's Subjects, That a sufficient Number of inferior Officers should be appointed in every Parish throughout this Province; *It is therefore Ordered, by the Authority aforesaid,* That the Majority of the Householders, in each and every Parish, do, on the Twenty-fourth Day of *June,* in every Year, elect and return to the Deputy-Secretary, within fourteen Days after such Election, six good and sufficient Men to serve as Bailiffs and Sub-Bailiffs in each Parish, out of which Number the King's Governor, or Commander in Chief for the Time being, with the Consent of the Council, is to nominate and appoint the Persons who are to act as Bailiffs and Sub-Bailiffs in each Parish; and such Nomination or Appointment is to be notified by the Deputy-Secretary to the respective Parishes and also published in the QUEBEC-GAZETTE, some Time in the last Week in *August* in every Year; and the said Bailiffs and Sub-Bailiffs, so nominated as aforesaid, are to enter upon, and begin to execute their respective Offices on the Twenty-ninth Day of *September* in every Year.

No Person to be elected a second Time to the same Office, except the whole Parish has served round, or that those who have not, are laid aside for some material Objection, which must be supported by Proof: But that there may never be an entire Set of new Officers at one Time, but that those who remain may be able to instruct those who enter into Office, one of those Persons who served as Sub-Bailiffs in each Parish, to be elected and nominated Bailiffs of said Parish the ensuing Year.

If a Bailiff dies in his Office, the Governor, or Commander in Chief, will nominate one of those returned by said Parish to serve as Sub-Bailiffs for the Remainder of the Year; and when a Sub-Bailiff happens to die in Office, the Bailiffs shall assemble the Parish upon the next publick Feast Day insuing his Decease, who shall proceed to elect and return, as aforesaid, another Sub-Bailiff.

The Election of Bailiffs and Sub-Bailiffs for this present Year, to be on the Twentieth Day of *October*; their Names to be returned immediately after the Election: Their Nomination will be notified and Published by the Deputy-Secretary as soon as may be, and they shall enter upon, and begin to execute their respective Offices, on the first Day of *December*, but all Elections, &c., after this Turn, shall be upon the Days and Times abovementioned and appointed for that Purpose.

The Bailiffs are to oversee the King's High-ways and the publick Bridges, and see that the same are kept in good and sufficient Repair; to arrest and apprehend all Criminals, against whom they shall have Writs or Warrants, and to guard and conduct them through their respective Parishes, and convey them to such Prisons or Places as the Writ or Warrant shall direct: They are also to examine all Bodies that are exposed, and on whom any Marks of Violence appear, in presence of five reputable Householders of the same Parish, whom he is hereby impowered to summons to inspect the same, and report in Writing the State and Circumstances thereof to the next Magistrate that a further Examination may be made therein if necessary; but this to be done only where the Coroner cannot by any Possibility attend, which in this extensive Province may frequently happen.

Where any Disputes happen concerning the Breaking or Repairing of Fences, upon Complaint made to the Bailiff, he shall summons the Defendant, who is to choose three indifferent Persons, and the Plaintiff three more, and these six, the Bailiff presiding, to decide the Dispute; from their Sentence either Party may appeal to the Quarter-Sessions; the Person found in Fault to pay One Shilling and no more, to the Person who shall draw up the Decision.

These Bailiffs to be sworn into their Office by the next Justice of the Peace, as soon as may be after their Nomination as aforesaid, and the said Oath to be returned to the next Quarter-Sessions by such Justice.

GIVEN *by His Excellency the Honorable* JAMES MURRAY, *Esq.; Captain-General and Governor in Chief of the Province of* Quebec, *and Territories thereon depending in* America, *Vice Admiral of the same, Governor of the Town of* Quebec, *Colonel-Commandant of the Second Battalion of the Royal American Regiment,* &c.,

&c. *In Council, at* Quebec, *the* 17*th of* September, Anno Domini, 1764, *and in the* Fourth *Year of the Reign of Our Sovereign Lord* George *the* III, *by the Grace of God of* Great-Britain, France *and* Ireland, KING, *Defender of the Faith*, &c., &c.

(Signed) Ja. Murray.

By Order of His Excellency in Council.

## X

## GOVERNOR MURRAY TO THE LORDS OF TRADE[1]

[Trans.: Shortt and Doughty.]

Quebec, 29th Oct'r, 1764.

My Lords,

* * * * * *

Little, very little, will content the New Subjects but nothing will satisfy the Licentious Fanaticks Trading here, but the expulsion of the Canadians who are perhaps the bravest and the best race upon the Globe, a Race, who cou'd they be indulged with a few priveledges which the Laws of England deny to Roman Catholicks at home, wou'd soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this American Empire.

I flatter myself there will be some Remedy found out even in the Laws for the Relief of this people, if so, I am positive the populer clamours in England will not prevent the Humane Heart of the King from following its own Dictates. I am confident too my Royal Master will not blame the unanimous opinion of his Council here for the Ordonnance establishing the Courts of Justice, as nothing less cou'd be done to prevent great numbers from emigrating directly, and certain I am, unless the Canadians are admitted on Jurys, and are allowed Judges and Lawyers who understand their Language his Majesty will lose the greatest part of this Valuable people.

* * * * * *

I have the Honor to be with the greatest truth and regard,

My Lords, Y'r Lordships' mo. Ob't, &c.,

(Signed) Ja. Murray.

## XI

## PETITION OF THE QUEBEC TRADERS

[Trans.: Shortt and Doughty.]

To the King's Most Excellent Majesty

The Humble Petition of Your Majesty's most faithful and loyal Subjects, British Merchants and Traders in behalf of themselves and their fellow Subjects, Inhabitants of your Majesty's Province of Quebec

May it please Your Majesty.

Confident of Your Majesty's Paternal Care and Protection extended even to the meanest and most distant of your Subjects, We humbly crave your Majesty's Gracious Attention to our present Grievances and Distresses.

We presume to hope that your Majesty will be pleased to attribute our approaching your Royal Throne with disagreeable Complaints, to the Zeal and Attachment we have to your Majesty's Person and Government, and for the Liberties and Priviledges with which your Majesty has indulged all your Dutifull Subjects.

Our Settlement in this Country with respect to the greatest part of us; takes it's date from the Surrender of the Colony to your Majestys Arms; Since that Time we have much contributed to the advantage of our Mother Country, by causing an additional Increase to her Manufactures, and by a considerable

[1] This letter and the document which follows (No. XI) are selected to illustrate the difficulties which Murray had with the few hundred British traders settled in Canada.

Importation of them, diligently applied ourselves to Investigate and promote the Commerical Interests of this Province and render it flourishing.

To Military Government, however oppressive and severely felt, we submitted without murmur, hoping Time with a Civil Establishment would remedy this Evil.

With Peace we trusted to enjoy the Blessing of British Liberty, and happily reap the fruits of our Industry: but we should now despair of ever attaining those desirable ends, had we not your Majesty's experienced Goodness to apply to.

The Ancient Inhabitants of the Country impoverished by the War, had little left wherewith to purchase their common necessaries but a Paper Currency of very doubtfull Value: The Indian War has suspended our Inland Trade for two years past, and both these Causes united have greatly injured our Commerce.

For the redress of which we repose wholly on your Majesty, not doubting but the Wisdom of your Majesty's Councils will in due time put the Paper Currency into a course of certain and regular Payment, and the Vigour of Your Majesty's Arms terminate that War by a peace advantageous and durable.

We no less rely on your Majesty for the redress of those Grievances we suffer from the Measures of Government practised in this your Majesty's Province, which are

The Deprivation of the open Trade declared by your Majesty's most gracious Proclamation, by the Appropriation of some of the most commodious Posts of the Resort of the Savages, under the Pretext of their being your Majesty's private Domain.

The Enacting Ordinances Vexatious, Oppressive, unconstitutional, injurious to civil Liberty and the Protestant Cause.

Suppressing dutifull and becoming Remonstrances of your Majesty's Subjects against these Ordinances in Silence and Contempt.

The Governor instead of acting agreeable to that confidence reposed in him by your Majesty, in giving a favorable Reception to those of your Majesty's Subjects, who petition and apply to him on such important Occasions as require it, doth frequently treat them with a Rage and Rudeness of Language and Demeanor, as dishonorable to the Trust he holds of your Majesty as painful to those who suffer from it.

His further adding to this by most flagrant Partialities, by formenting Parties and taking measures to keep your Majesty's old and new Subjects divided from one another, by encouraging the latter to apply for Judges of their own National Language.

His endeavouring to quash the Indictment against Claude Panet (his Agent in this Attempt who laboured to inflame the Minds of the People against your Majesty's British Subjects) found by a very Worthy Grand Inquest, and causing their other judicious and honest Presentments to be answered from the Bench with a Contemptuous Ridicule.

This discountenancing the Protestant Religion by almost a Total Neglect of Attendance upon the Service of the Church, leaving the Protestants to this Day destitute of a place of Worship appropriated to themselves.

The Burthen of these Grievances from Government is so much the more severely felt, because of the natural Poverty of the Country; the Products of it been extremely unequal to support its Consumption of Imports.

Hence our Trade is miserably confined and distressed, so that we lye under the utmost Necessity of the Aids and Succours of Government, as well from Our Mother Country as that of the Province, in the Place of having to contend against Oppression and Restraint.

We could enumerate many more Sufferings which render the Lives of your Majesty's Subjects, especially your Majesty's loyal British Subjects, in the Province so very unhappy that we must be under the Necessity of removing from it, unless timely prevented by a Removal of the present Governor.

Your Petitioners therefore most humbly pray your Majesty to take the Premises into your gracious Consideration, and to appoint a Governor over us, acquainted with other maxims of Government than Military only; And for the better security of your Majesty's dutiful and loyal Subjects, in the Possession and Continuance of their Rights and Liberties, we beg leave also most humbly to petition that it may please your Majesty, to order a House of Representatives to be chosen in this as in other your Majesty's Provinces; there being a number more than Sufficient of Loyal and well affected Protestants, exclusive of military Officers,

to form a competent and respectable House of Assembly; and your Majesty's new Subjects, if your Majesty shall think fit, may be allowed to elect Protestants without burdening them with such Oaths as in their present mode of thinking they cannot conscientiously take.

We doubt not but the good effects of these measures will soon appear, by the Province becoming flourishing and your Majesty's People in it happy. And for Your Majesty and your Royal House your Petitioners as in Duty bound shall ever pray, &c., &c.

(Signed by 21 traders.)

## XII

## ORDINANCE OF NOV. 6th, 1764

[Trans.: Shortt and Doughty.]

An ORDINANCE, for quieting People in their Possessions, and fixing the Age of Maturity.

*WHEREAS* it appears right and necessary, to quiet the Minds of the People, in Regard to their Possessions, and to remove every Doubt respecting the same, which may any ways tend to excite and encourage vexatious Law-Suits; and until a Matter of so serious and complicated a Nature, fraught with many and great Difficulties, can be seriously considered, and such Measures therein taken, as may appear the most likely to promote the Welfare and Prosperity of the Province in General, His Excellency, by and with the Advice and Consent of His Majesty's Council, *Doth hereby Ordain and Declare*, That until the tenth day of *August* next, the Tenures of Lands, in respect to such Grants as are prior to the Cession thereof, by the Definitive Treaty of Peace, signed at *Paris* the tenth day of *February*, One Thousand Seven Hundred and Sixty-three, and the Rights of Inheritance, as practised before that Period, in such Lands or Effects, of any Nature whatsoever, according to the Custom of this Country, shall remain to all Intents and Purposes the same, unless they shall be altered by some delcared and positive Law; for which Purpose the present Ordinance shall serve as a Guide and Direction in all such Matters, to every Court of Record in this Province: Provided that nothing in this Ordinance contained shall extend, or be construed to extend to the Prejudice of the Rights of the Crown, or to debar His Majesty, His Heirs or Successors from obtaining, by due Course of Law, in any of His Courts of Record in this Province, according to the Laws of *Great-Britain*, any Lands or Tenements, which at any Time hereafter may be found to be vested in His Majesty, his Heirs or Successors, and in the Possession of any Grantee or Grantees, his, her, or their Assigns, or such as claim under them, by Virtue of any such Grants as aforesaid, or under Pretence thereof, or which hereafter may be found to have become forfeited to His Majesty, by Breach of all or any of the Conditions in such Grants respectively mentioned and contained.

*And be it Ordained and Declared, by the Authority aforesaid*, That from and after the first Day of *January*, One Thousand Seven Hundred and Sixty-five, every Person arrived at the Age of Twenty-one compleat Years, shall be deemed for the future of full Age and Maturity agreeable to the Laws of *England*, and shall be entituled to take full Possession from that Time of every Estate or Right to him belonging; in Consequence thereof to sue for the same, or bring to Account the Guardians, or other Persons who may have been entrusted therewith.

GIVEN *by His Excellency the Honourable* JAMES MURRAY, *Esq.; Captain-General and Governor in Chief of the Province of* Quebec, *and Territories thereon depending in* America, *Vice Admiral of the same, Governor of the Town of* Quebec, *Colonel-Commandant of the Second Battalion of the Royal American Regiment*, &c., &c. *In Council, at* Quebec, *the 6th Day of* November, Anno Domini, 1764, *and in the Fifth Year of the Reign of our Sovereign Lord* George *the* III, *by the Grace of God, of* Great-Britain, France *and* Ireland, KING, Defender of the Faith, &c., &c.

JA. MURRAY.

## XIII

## PRESENTMENTS OF THE GRAND JURY OF QUEBEC AND KINDRED DOCUMENTS, 1764

[Trans.: Shortt and Doughty.]

Presentments of Oct$^{r}$ Sessions made at a Continuance thereof by Adjournment held at the Sessions house in the City of Quebec the 16$^{th}$ Oct$^{r}$ 1764 by the Grand Jury in, and for the said District represent.

1. That the Great Number of inferior Courts establish'd in this province with an intention to administer Justice are tiresome litigious and expensive to this poor Colony as they very often must be attended with the disagreeable necessity of appeals and of course of many exorbitant fees.

2$^{d}$ The Great number appointed Justices of the Peace out of so few men of Character legally qualified, and fit to be trusted with determining the liberty and property of his Majesty's Subjects to serve their Country as Jurors, is Burthensome and not practised in other Infant Colonys like this. It can answer no good end, to waste mens time, in attending on Courts where no man is upon the Bench qualified to explain the Law, and sum up the Evidences to the Jury, to prevent its being misled by the Barristers.

4. That in the Southern Colonies, where men qualified to serve the publick are scarce, there are no Jurys calld but when the Chief Justice of the province presides, therefore neither the Lives nor Libertys of his Majesty's Subjects, nor any property above the value of 3£ Sterl$^{g}$ are left finally to the decision of the Justices of the Peace, and for the easy and speedy dispatch of Justice there are Annually held three Courts of Common pleas and Two of Sessions or assizes, where Jurys are summon'd in Rotation from the different parts of the province and return'd by Ballots, Yet we are of opinion from the present state of this Colony it would be reasonable to Authorize any three of his Majesty's Justices of the Peace finally to determine the fate of any sum not exceeding Ten pounds without Jury or appeal.

5. We represent also as a very great grievance that the market places are converted into Hutts, Stalls &c. for Nurserys of Idlers, who would out of Necessity be employ'd in several Branches of Industry, such as Fishing Farming &c$^{a}$ if not permitted contrary to good policy to occupy and infest the publick Ground.

6. Giving away and turning the Kings Batterys Docks and Wharfs into private property, or suffering them to be so occupy'd, are great Grievances to the Inhabitants of this province.

7. We recommend the exertion of the Laws of the Mother Country for the due observance of the Sabbath that the same may not longer be profaned, by selling, buying keeping open shops, Balls, Routs, Gaming or any other Idle Divertions, for the better accomplishing of which, a Learned Clergyman of a moral and exemplary Life, qualified to preach the Gospel in its primative purity in both Languages would be absolutely necessary.

8. From the sense of the nature of Oaths administred to Jurys as also of the consequences of the matters that may occur for discussion, We in Justice to Ourselves and our fellow subjects, are resolved never more to sit as Jurors at any Court where some man sufficiently versed in the Law does not preside.

9. We represent that as the Grand Jury must be consider'd at present as the only Body representative of the Colony, they, as British Subjects, have a right to be consulted, before any Ordinance that may affect the Body that they represent, be pass'd into a Law, And as it must happen that Taxes be levy'd for the necessary Expences or Improvement of the Colony in Order to prevent all abuses & embezlements or wrong application of the publick money.

10. We propose that the publick Accounts, be laid before the Grand Jury, at least twice a year to be examined and Check'd by them and that they may be regularly settled every Six months before them, which practice strictly adhered to, will very much prevent the abuses and confusion, too common in these matters.

11. An Ordinance pass'd by the Gov$^{r}$ in Council confirming and rendring valid all Decrees of the different military Councils erected in this province before the establishm$^{t}$ of the Civil Law may be amended by allowing an Appeal to any

of the Civil Courts, if the matter decided in any of the Military Courts exceed the sum of Ten pounds.

12. The Ordinance made by the Governor and Council for establishing Courts of Judicature in this province [1] is grievous and some Clauses of it, We apprehend to be unconstitutional, therefore it ought forthwith to be amended to prevent his Majesty's Subjects being aggrieved any longer thereby.

13. Proper regulations regarding the measurement & quality of Fire wood are wanted as well as the following articles. Viz[t]

For regulating Carts and Carriages of every kind.

For clearing and keeping clean the public streets Docks and Landing places.

For sweeping Chimnies to prevent accidents by Fire.

For establishing a publick protestant school and a Poor house.

14. For suppressing gaming houses, in particular that of the Quebec Arms kept by John King in the lower Town, which we have been informed has been very particularly countenanced; and which we ourselves present, from our own Knowledge as a notorious nusance, and prejudicial to the Industry and Trade of this City.

Also for the preventing for the future any abuses Arising from (and for the amending of) that well intended order for carrying Lanthorns in the night time, that regular people going about their Lawful Business without giving Disturbance to the publick quiet, may not be liable to Imprisonments, by Sentrys serjeants or Officers.

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|---|---|
| | James Johnston, Foreman |
| John Lymburner | Sam[l] Sills |
| —— Dumond | —— Perrault |
| John Danser | —— Poney |
| —— Charest | Alex[e] McKinzie |
| —— Tachet | Phil. Payn |
| Sam[l] Duncan | Thos. Story |
| Peter Faneiul | Gilbert McRanddle |
| Geo. Fralton | A. Dumas |
| Dan[l] Bayne | Boisseau |
| Tho[s] Aylwyn | Amiott |

That. Among the many grievances which require redress this seems not to be the least, that persons professing the Religion of the Church of Rome do acknowledge the supremacy and jurisdiction of the Pope, and admit Bulls, Briefs, absolutions &c[a] from that see, as Acts binding on their Consciences, have been unpannelld, en Grand and petty Jurys even where Two protestants were partys, and whereas the Grand Inquest of a County City or Borough of the Realm of Great Britain, are obliged by their Oath to present to a Court of Quarter Sessions of assises, what even appears an open violation of the Laws and Statutes of the Realm, any nusance to the subjects or Danger to his Majesty's Crown and dignity and Security of his Dominions. We therefore believe nothing can be more dangerous to the latter than admitting such persons to be sworn on Jurys, who by the Laws are disabled from holding any Office Trust or Power, more especially in a Judicial Capacity, with respect to which above all other, the Security of his majesty, as to the possession of his Dominions and of the subject as to his Liberty, property and Conscience is most eminently Concern'd.

That. By the Definitive Treaty the Roman Religion was only tolerated in the province of Quebec so far as the Laws of Great Britain admit, it was and is enacted by the 3[d] Jam[s] 1[st] Chap[r] 5[th] Section 8[th] no papist or popish Recusant Convict, shall practice "the Common Law, as a Councellor, Clerk, Attorney, "or Sollicitor nor shall practice the Civil Law, as Advocate or proctor, nor "practice physick, nor be an apothecary, nor shall be a Judge, Minister, Clerk or "Steward of or in any Court, nor shall be Register or Town Clerk or other "Minister or Officer in any Court, nor shall bear any office or charge, as Captain, "Lieutenant, Serjeant, Corporal, or Antient Bearer or Company of Soldiers "nor shall be Captain, Master, or Governor, or bear any office of Charge, of or "in any Ship, Castle or Fortress, but be utterly disabled for the same, and every "person herein shall forfeit one hundred pounds; half to the King and half to "him that shall sue". We therefore believe that the admitting persons of the Roman Religion, who own the authority, supremacy and Jurisdiction or the Church of Rome, as Jurors, is an open Violation of our most sacred Laws and

[1] See No. IX (September 17, 1764).

Libertys, and tending to the utter subversion of the protestant Religion and his Majesty's power authority, right, and possession of the province to which we belong.

That—so many Gentlemen of the Army and in actual service exercising any Judicial Authority, to be unconstitutional nothing but necessity by the want of a sufficient number of subjects qualify'd for the purpose, can excuse, even in a new Country, such an unwarrantable incroachment on the establish'd maxims of a British Government.

The foregoing Representations of Grievances abuses and nusances, we the Grand Jurors of the District of Quebec, believe it our indispensable duty to make from the nature of Our Oath and charge, and from the informations presented to us, as well as what occurs to our own observations, and do strongly recommend the same for redress to all those who by their Sacred Oath, are bound to redress them.

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|---|---|
| | Jas Johnston Foreman |
| Thos Story | Jno Lymburner |
| Alexr McKinzie | Phil. Payne |
| Saml Sills | Peter Farneuil |
| Saml Duncan | Jno Danser |
| Danl Bayne | Gilbert McRandall |
| Geo. Fulton | A. Dumas |
| Thos Alwin | |

As [1] the presentment made by the protestant members of the Jury, wherein the impannelling of Roman Catholicks upon Grand petty Juries, even where two protestants are the parties, is complained of. As this very presentment has been openly & ungenerously used as a handle to set his Majesty's old & new Subjects at varience in this province, we cannot help endeavourg to set the public right in this particular in which they have been so grossly imposed on: What gave birth to this presentmt. was the following short, but pithy Paragraph, in the Ordinance of the 17th Day of Septr last.

"In all Tryalls in this Court all his Majesty's Subjects in this Colony to be "admitted on Juries without any distinction:" This is qualifying the whole province at once for an Office which the best & most sensible people in it are hardly able to discharge: It then occur'd to the Jury that was laying a Subjects life, liberty & property too open, & that both old & new Subjects might be apprehensive of the consequence from the unlimited admission of Jurymen His Majesty's lately acquired Subjects cannot take it amiss, that his ancient subjects remonstrate agt this practice as being contrary to the laws of the realm of England, the benefit of which they think they have a right to, nor ought it to give offence when they demand that a protestant Jury should be impannelled when the litigating parties are protestants such were the real motives of the Presentment, and we can aver that nothing further was meant by the quotation from the Statute.

That the subscribers of the presentment meant to remove every Roman Catholick from holding any office or filling any public employment is to all intents and purposes a most vile groundless insinuation & utterly inconsistent: Sentiments & intentions such as these we abhor, & are only sorry that principles do not allow us to admit Roman Catholicks as Jurors upon a cause betwixt two protestants; perhaps theirs hold us in the same light in a Case betwixt two Catholicks, and we are very far from finding fault with them, the same liberty that we take of thinking for ourselves we must freely indulge to others.

*Statement by French Jurors in reference to the foregoing Presentments.*

Charrest, Amiot, Tachet, Boisseaux, Poney, Dumont & Perrault new Subjects, Grand Jurors in the districts of Quebec, having demanded from His Excellency in Council the Translation into French of two Presentments written in English in the House of the Three Canons, all the Jurors being assembled, one of which presentments of the 16th of the present month of October, was signed by the petitioners along with the other jurors, and the other was signed by the jurors who were ancient subjects understanding English alone, and having obtained the

[1] This document is not dated, but it was evidently prepared some time after the former presentments as it replies to criticisms passed upon them. [Note of the Canadian Archivists.]

same, they consider themselves bound to declare the part which they had taken in the articles which compose the first Presentment.

They begin by saying that before the Signature of this Presentment, there had been many sessions, where the question had been discussed by making Several Drafts of Presentment on loose sheets, and of those the petitioners had knowledge of only a part while many of those, with the contents of which they were acquainted, had been modified or rejected by the Petitioners; that a Summary certainly had been made of all the papers, and that after it was made, it was offered to us for Signature, without being interpreted, but was read in English only, that when it was requested by some of us, that it should be read to us, the answer was that this summary was only a Résumé of the Drafts of the Articles which had been proposed and accepted during the late Sessions, that time pressed for their presentation and that it was very unnecessary.

They intend therefore to set forth the part which they have had in the different Articles which compose this Presentment.

1. Article. Not only had we no knowledge of this Article, but we should certainly have opposed this proposition with all our might, as being contrary to the interests of His Majesty's New Subjects in the Colony, and as being opposed to the wise ordinance of the Governor and Council, who, seeing the necessity of establishing a Court of Justice where the New Subjects should be able to find a Sanctuary in which they might be judged as Frenchmen by Frenchmen, according to Ancient Customs, and in their own Tongue, has since been requested in a Petition to name the Judge of this Jurisdiction and which the Petitioners themselves have signed as Citizens; for besides the convenience that it would be to them to be judged in this Jurisdiction, they would save more than half the costs.

2, 3, 4, Art$^{es}$. We did not understand these Articles if they were interpreted to us, and as we are ignorant of what is going on in the different Colonies, we have no interest in proposing any particular alterations in these Articles.

5. We understand that wooden Houses and Stalls in the Market are contrary to good Policy, and are sometimes the Causes of Fires.

6. We have suggested with regard to the Quays and Dockyards that they should be allotted for the use and convenience of Trade. As to the Batteries we do not consider that they appertain to our Department.

7. We have heard this Article in part, and only in connection with Sunday observance. But the Proposal of having a Minister to preach the Gospel in both languages has certainly not been explained to us.

8. We have no Knowledge that this matter has ever been brought up for Consideration.

9 & 10. These two Articles have not been explained to us, and we are not sufficiently far-seeing to pay attention to Measures which at present appear to us very remote, owing to the hope which we entertain that no question of Taxation for this Colony will arise.

11. We have not understood this whole Article as it is explained. We have even demonstrated how prejudicial to the Colony, was the Proposition to diminish the Court of Appeals, in that it would open a wide road to new lawsuits, that past cases had been settled according to the circumstances of the Time, and that Proofs which might have been valid for judgments then, could no longer be in existence, which would completely change the aspect of Things; however, accepting what we were told, that this Article was subject to the Will of the Governor and His Council, we subscribed to it and the S. Tachet made a note of the reservation on a loose sheet, which was left at the office, as a Minute. Moreover we had not heard that a request for such a large reduction on the Appeals was asked for, it having only been a question of asking for an Amendment.

12. This Article has never been communicated to us, and we imagine it was only proposed, because it is stated in that ordinance, that Canadian Lawyers, New Subjects of H.M. might practise. The ordinance appears to us the more equitable, in that it is only right that the new Canadian Subjects should employ Persons whom they understand, and by whom They are understood, all the more because there is not one English Lawyer who knows the French Language, and with whom it would not be necessary to employ an Interpreter who would scarcely ever give the exact meaning of the Matter in hand. And further, without this wise regulation which ensures the Tranquillity of Domestic affairs would not the opposing Parties find themselves involved in exorbitant expense?

13. We are thoroughly familiar with the Items which form a Part of this Article, such as the Proposal to establish Regulations for the Measuring of Wood, for Carters and Vehicles of every description, for the best method of keeping the Streets, public Squares, and Docks clean, and for the Sweeping of Chimneys to prevent Accidents by fire. We have given our consent solely to these Items, and our present situation does not allow us to extend our care in other directions.

14. There has been no question of discussing Gaming Houses except in desultory conversation, and we did not suppose it had been spoken of seriously enough to make it worth while to consider, if it was proposed to denounce them as suspicious Houses, especially that of the said King, to whom none of us can attribute as a crime the Protection which is granted him by those whom he has the Faculty of Serving so well. Besides this we did happen to say in conversation that if they were playing at unseasonable Hours, and at Games proscribed by the Police, then this Article might represent it as dangerous to youth and to Trade, but we have absolutely no knowledge that this Article was in the Presentment which we have signed.

15. We did not understand this Article in the Sense in which it is explained. Of course we were aware that it was at the request and Solicitation of the Town, and for the safety of the same, that the order to carry Lanterns had been obtained, and we believe that it certainly would conduce to the security of the Town and to good order to carry it out. We have replied to this Effect in French to a letter from the Governor of this Province, on the last Day of our Session, at which time he proposed to establish public lamps if the Cost was not excessive. Although written in French, many of our Fellow-members read it, and have told us that they on their side replied to the same effect in English.

We quite realize that in order to avoid Confusion in the future, Canadian Jurors should give their Opinions only after the Subjects on which it is asked have been translated into the French Language.

In view of the knowledge that we, the G$^{d}$ Jurors, Canadian new Subjects of H.M. have,—having read it in the French tongue,—of the Presentment which our confreres, the Ancient Subjects, Grand Jurors, have made at the Court of Session, and of the two Subscriptions, with the intention of excluding us from the privilege of serving ourselves and Our associates, our Country and our King, pretending that they conscientiously believe us to be incapable of holding any office or even of repulsing and fighting the Enemies of H. M$^{ty}$ We make the following statement.

That H. M$^{ty}$ being informed that all the Subjects forming this Province were Catholics still believed them capable as such of taking the Oath of Loyalty, and therefore fit to be admitted to the service of their Country, in such a way as they shall be thought qualified for. It would be shameful to believe that the Canadians, New Subjects, cannot serve their King either as Serjeant, or Officers, it would be a most humiliating thought, and very discouraging to free Subjects who have been admitted to the Privileges of the Nation, and their Rights, as explained by H.M. For more than six Months we have had Catholic Canadian Officers in the Upper Country, and a Number of Volunteers aiding to repulse the Enemies of the Nation; and cannot a man who exposes himself freely to shed his blood in the Service of his King and of the Nation be admitted to positions where he can serve the Nation and the Public as a Juror, since he is a subject? The 3$^{rd}$ of James I. Chap. 5, Sec. 8, only refers to Catholics who may enter the Kingdom, and as there has never been any law in any Kingdom without some exception [1] was a proof that in time England would admit to the National rights so numerous a Colony of Catholics, or if this had been foreseen, that the Law would seek to make them slaves. We think differently from our confreres, and even if we were of their opinion, we should have enough Confidence in the King's Goodness to believe that he would grant all the Numerous people of this Colony sufficient respite to depart, though at the sacrifice of all their possessions, and in desperation cultivate the Ground, in some place, where being considered as Subjects, they and their Children might lead their Lives sheltered from Injustice. This they could never do here were they deprived of all Offices, or positions as Jurors.

The Leniency of the existing Government has made us forget our losses, and has attached us to H. M. and to the Government; our fellow citizens make us feel our Condition to be that of Slaves. Can the faithful and loyal Subjects of the King be reduced to this?

[1] Some line must have been omitted here, for as it is, it is not sense. [Note of Canadian Archivists.]

This ends the Protest that we make against the use of our Signatures on the Presentment of the Sixteenth instant, in every point in which they might be prejudicial to us. Done at Quebec the 26th October, 1764.

| | |
|---|---|
| Perrault, | Bonneau, |
| Tachet, | Charest, |
| Amiot, | Peney, |
| Damont. | |

*Address of French Citizens to the King regarding the Legal System.*

TO THE KING

The true Glory of a Victorious King consists in assuring to the vanquished the same happiness and the same tranquillity in their Religion and in the possession of their property that they enjoyed before their defeat. We have enjoyed this Tranquillity even during the War, and it has increased since the establishment of Peace. Would that thus it had been secured to us! Deeply attached to our religion, we have sworn at the foot of the altar, unalterable fidelity to Your Majesty. From it we have never swerved and we swear anew that we never will swerve therefrom, although we should be in the future as unfortunate as we have been Happy: but how could we even be unhappy after those tokens of paternal affection by which Your Majesty has given us the assurance that we shall never be disturbed in the Practice of our Religion.

It has seemed to us indeed from the manner in which Justice has been administered among us up to the present time, that it was His Majesty's Intention that the Customs of our Fathers should be adhered to, so that what was done before the Conquest of Canada should be adhered to in the future in so far as it was not opposed to the Laws of England, and to the public good.

Mr. Murray, who was appointed Governor of the Province of Quebec to the satisfaction of all its inhabitants, has up to the present time, at the head of a Military Council administered to us all the justice that we could have expected from the most enlightened jurists. This could hardly have been otherwise, Disinterestedness and Equity being the basis of their decisions.

For fours years we enjoyed the greatest tranquillity. By what sudden stroke has it been taken away through the action of four or five jurists, whose character we respect, but who do not understand our language, and who expect us, as soon as they have spoken, to comprehend legal constructions which they have not yet explained, but to which we should always be ready to submit, as soon as we become acquainted with them, but how can we know them, if they are not delivered to us in our own tongue?

It follows, that we have seen with grief our fellow citizens imprisoned without being heard, and this at considerable expense ruinous alike to debtor and creditor; we have seen all the family affairs, which before were settled at slight expense, obstructed by individuals wishing to make them profitable to themselves, who know neither our language nor our customs and to whom it is only possible to speak, with guineas in one's hand.

We hope to prove to your Majesty with all due submission the statements which we have the honour to lay before him.

Our governor, at the Head of his Council, has issued an ordinance [1] for the Establishment of Courts, by which we were rejoiced to see, that to assist us in the settlement of family and other matters, a Lower Court of Justice was to be established where all cases between Frenchman and Frenchman could be decided. We have seen that by another ordinance, to avoid lawsuits, cases decided by this court should be without appeal, unless they were of the value of three Hundred *Livres*.

In proportion to the greatness of our Joy on seeing these wise regulations, was the distress with which we discovered that fifteen English Jurors as opposed to seven Jurors from the new Subjects had induced the latter to subscribe to Remonstrances in a language which they did not understand against these same Regulations. This is proved by their Remonstrances and Signatures of the evening before, in a Petition in which they urgently beg the Governor and his Council that their Judge may hold a sitting as their affairs were suffering for want of it.

[1] See No IX.

With deep bitterness in our hearts we have seen, that after all the proofs of Your Majesty's Paternal Affection for your new Subjects, these same fifteen Jurors, with the assistance of the Lawyers have proscribed us as unfit, from differences of Religion, for any office in our country; even Surgeons and Apothecaries (whose professions are free in all countries) being among the number.

Who are those who wish to have us proscribed? About thirty English merchants, of whom fifteen at the most, are settled here. Who are the Proscribed? Ten thousand Heads of Families who feel nothing but submission to the orders of Your Majesty, and of those who represent you, who do not recognize as such this socalled Liberty with which the other party desire to incite them to opposition to all the Regulations which might be to their advantage, and who have enough intelligence to see that these persons are guided by their own Interest rather than the public good.

And in fact what would become of the general prosperity of the Colony, if those who form the principal section thereof, became incapable members of it through differences of Religion? How would Justice be administered if those who understand neither our Language nor our Customs should become our Judges, through the Medium of Interpreters. What confusion, what Expenditure of Money would not result therefrom? Instead of the favoured Subjects of Your Majesty, we should become veritable Slaves; a Score of Persons whom we do not know would become the Masters of our Property and of our Interests; We should have no further Redress from those equitable Men, to whom we have been accustomed to apply for the settlement of our Family Affairs, and who if they abandoned us, would cause us to prefer the most barren country to the fertile land we now possess.

It is not that we are not ready to submit with the most respectful obedience to all the Regulations which may be made for the Wellbeing and Prosperity of the Colony, but the favour which we ask is that we may be allowed to understand them. Our Governor and his Council have instructed us concerning those which have been already issued. They are for the good of the Colony, we have shown our Gratitude for the same, and yet now we are made to represent as a hardship by those who are speaking in our name, what we have found to be a benefit.

That we may not further encroach upon Your Majesty's Precious Time, we conclude by assuring You, that without knowing the English Constitution, we have during the past four years, enjoyed the Beneficence of the Government, and we should still enjoy it, if Mess$^{rs}$ the English Jurors were as submissive to the wise decisions of the Governor and his Council, as we are; if they were not seeking by new regulations, by the introduction of which they hope to make us their slaves, to change at once the order and administration of Justice, if they were not desirous of making us argue our Family Rights in a foreign tongue, and thereby depriving us of those Persons, who from their knowledge of our Customs, can understand us, settle our differences, and administer Justice at slight expense; using every effort, on the plea of the difference of Religion, to prevent them even from acting as Counsel for their fellow countrymen. This we can only regard as due to the base anxiety for their own interests of those who have suggested such Principles.

We entreat Your Majesty with the deepest and most respectful submission to confirm the system of Justice which has been established for the French, by the deliberations of the Governor and Council, as also the Jurors and all others of different professions, to maintain the Notaries and advocates in the exercise of their functions, to permit us to transact our Family Affairs in our own tongue, to follow our customs, in so far as they are not opposed to the general Wellbeing of the Colony, and to grant that a Law may be published in our Language, together with the Orders of Your Majesty, whose most faithful Subjects, we do, with the most unalterable Respect, hereby declare Ourselves.

The most faithful Subjects. (Ninety-five signatures follow.)

## XIV

## REPORT OF ATTORNEY AND SOLICITOR GENERAL REGARDING THE CIVIL GOVERNMENT OF QUEBEC, 1766 [1]

[Trans.: Shortt and Doughty.]

To the Right honble the Lords of the
Committee of Council for Plantation affairs.

My Lords,—In humble obedience to your Order of the 19th of November last wherein it is recited, that His Majesty having been pleased, to refer to your Lordships several memorials and Petitions from His Majesty's Subjects in Canada as well British as French, complaining of several of the Ordinances and proceedings of the Governor and Council of Quebec, and of the present Establishment of Courts of Judicature and other Civil Constitutions; Your Lordships had on that Day, taken the said paper into your Consideration, together with a Report made thereupon by the Lords Commissioners for Trade and Plantations dated the 2d Sept. last and finding that the said Lords Commissioners had proposed another System of Judicature to be substituted in lieu of that which is now subsisting You thought it proper to Order, that the said Memorials, Petitions and Reports (which were thereunto annexd) should be referr'd to Us, to consider and report Our Opinion, and observations thereon, together with such alterations to be made in what is proposed in the said Report of the Lords Commissioners for Trade and Plantations, and such other regulations and propositions as we should think fitt to suggest for the forming a proper plan of Civil Government for the said province of Quebeck; and to that end we were directed to take into our Consideration such parts of the annex't report of Governor Murray, upon the state of the said province as relate to the Civil Government thereof whilst the same was Annex'd to the Crown of France, And were also required to send for Lewis Cramahé, Esq., Secretary to Governor Murray, and Fowler Walker, Esq., Agent for the said Province of Quebec, who were Order'd to attend us from time to time, to give us such further Lights and information as might be requisite for the purpose aforementioned.

We have perused the several papers referr'd to us, together with the said two Reports and have also been attended by the Gentlemen named in your Order; and upon the whole matter, beg leave humbly to submit to your Lordships such Reflections as have occurred to us in the Course of that imperfect Consideration, which we have been able at this Busy Season of the year to give to the Great subject of the *Civil Government* of Quebec and the propositions made by the Lords Commissioners of *Trade and Plantations*.

My Lords, it is evident that Two very principal sources of the Disorders in the province have been. 1st The attempt to carry on the Administration of Justice without the aid of the natives, not merely in new forms, but totally in an unknown tongue, by which means the partys Understood Nothing of what was pleaded or determined having neither Canadian Advocates or Sollicitors to Conduct their Causes, nor Canadian jurors to give Verdicts, even in Causes between Canadians only, Nor Judges Conversant in the French Language to declare the Law, and to pronounce Judgment; This must cause the Real Mischiefs of Ignorance, oppression and Corruption, or else what is almost equal in Government to the mischiefs themselves, the suspicion and Imputation of them.

The second and great source of disorders was the Alarm taken at the Construction put upon His Majesty's Proclamation of October 7th, 1763. As if it were His Royal Intentions by his Judges and Officers in that Country, at once to abolish all the usages and Customs of Canada, with the rough hand of a Conqueror rather than with the true Spirit of a Lawful Sovereign, and not so much to extend the protection and Benefit of His English Laws to His new subjects, by securing their Lives, Libertys and propertys with more certainty than in former times, as to impose new, unnecessary and arbitrary Rules, especially in the Titles to Land, and in the modes of Descent, Alienation and Settlement, which tend to confound and subvert rights, instead of supporting them.

1st To the *first* of these Evils the Order made by your Lordships on the 15th of

[1] This document is the first of a series of documents, official and otherwise, which throw light on the state of law in Canada during the period 1763–74. (For others, see Nos. XVI, XXI, XXII, XXIV, XXV.)

November last founded on the Report of the Lords Commissioners of Trades and Plantations, requiring the Governor and Commander in Chief of the province (by an additional Instruction) to Publish an Ordinance [1] for admitting Canadian Jurors, in the several cases therein express'd, and for permitting Canadian Advocates, Attorneys, and Proctors, under proper regulations, provides an adequate Remedy.

2d To the *Second* Evil the Lords Commissioners of Trade and plantations by their Report, have apply'd themselves with great Care, ability and Judgement to suggest Remedys, by pointing out the defects in the late Ordinance of Sept'r, 1764, and reforming the Constitution of Justice; We concur with their Lordships in the objections made to the Ordinance; And upon the several articles of the *Plan* laid down in that report, the following observations Occur to Us, both for the Confirmation and Improvement of them.

1st The *first* Article proposes a Court of Chancery consisting of the Gov'r and Council, who shall also be a Court of Appeals, from whom an appeal will lie to the King in Council; By this Article the Lords of Trade very rightly mean to Invest the Gov'r and Council with Two different Jurisdictions; The *One* as a Court of Equity, to give relief originally in that Capacity, the other as a Court of Errors, to review in the second Instance the Judgments of the Court of Common Law, mentioned in the next Article.

2d The *Second* Article proposes a *Superior Court of* Ordinary Jurisdiction, uniting all the proper powers in Criminal and Civil Cases and matters of Revenue, in this Court, it is recommended that a Chief Justice should preside, Assisted by three puisne Judges; These are required to be conversant in the French Language, and that one of them particularly should be knowing in the French usages.

This proposition appears to us well conceiv'd; and we submit to your Lordships, whether it may not be adviseable, that they should be instructed to confer sometimes with the Canadian Lawyers most respected for Learning, Integrity and Conduct, who may prove of the greatest assistance to English Judges. Competent Salarys for the Encouragement of Able and Worthy men seem absolutely necessary in this Establishment, with a due distinction between the Chief Justice and his Brethren. The new Judge of Vice Admiralty for America has appointments of £800 per Annum.

3d The *Third* Article relates to *Terms* for the sitting of the Superior Court at Quebec, either according to the terms appointed at Westminster, or as may be more convenient. This matter must be accommodated to the Seasons, Climate and Convenience of the people in their Tillage and other General employments, therefore it seems proper to be left to the future Judgement of the Gov'r, Chief Justice and Principal servants of the Crown, entrusted with the Government of the province and ought to be fix'd by *Ordinance*.

4th The *Fourth* Article proposes *four Sessions* of Assize, Oyer and Terminer and Goal Delivery at *Quebec*, with like special Commissions, once or oftener in the year at *Trois Rivieres* and *Montreal*. We submit to your Lordships, that it may be unnecessary to lay down any particular Rules for holding *four* Sessions in the manner mentioned at *Quebec*; because all Civil and Criminal Causes arising in that District may be tried at Bar in Term time, or (as the legal Expression is) in *Bank* by Order of the Judges, or under the General powers of the Supreme Court, As to the *Circuit Courts* to be held *once*, or perhaps *twice* in the year (which seems better) at *Trois Rivieres* and *Montreal*, We think, that it may be proper to require that the Judges, shall continue in each of those places, at the least, for a Certain Number of Days to give time and opportunity for the resort of partys and the convenient dispatch of Business, in like manner as was done by Henry the 8th in establishing the Courts of Great Sessions for Wales, and by the Parliament in his late Majesty's Reign, when the Circuit Courts were settled or Scotland.

5th The Fifth Article recommends the Distribution of the province into three Countys or Districts, of which, *Quebec, Montreal* and *Trois Rivieres* shall be the three Capital Towns, and that an Annual Sheriff shall be named for each.

We are humbly of opinion that this Distribution of the province is more natural and convenient than the plan lately followed by the Governor and Council, and it will be more agreeable to the People, as it is conformable to their Antient Division of the Country. But considering the difficulty of procuring English and protestant sheriffs, especially at Trois Rivieres (where at present only Two

[1] See No. XV.

persons who are half pay Officers reside thus qualified) it may deserve consideration whether such Sheriff should not serve longer than one year, till such time as the gradual increase of Inhabitants may facilitate an Annual Rotation; or whether the Annual Sheriff of *Quebec* may not also serve that office for *Trois Rivieres*. This will oblige him, to appoint two Deputys or under Sheriffs, that is one for each District, And if this method be taken, the Sheriff may be made an Annual Officer, because *Quebec* can afford sufficient number of proper persons to supply the Rotation, and *Montreal* (it is agreed) Can do the like.

6th The *Sixth* Article proposes to give the Justices of the Peace in the three several Districts, at their General Quarter Sessions, Power to determine finally all causes not exceeding the value of *Ten Pounds* (the Title to Lands not being in Question) with a Jury where it exceeds *Five Pounds* and without one where it falls under that sum, it gives also to Two Justices in Petty Sessions, similar Authority in Similar cases, where the value of the matter in dispute is not more than Forty Shillings. The latter Authority appears to us well proposed; but we submit, whether it may not be better to reserve the Jurisdiction in matters exceeding that value as far as *Ten* pounds to be determined in *Quebec*, By proceeding in nature of the Civil Bill in Ireland before the Judges of the Superior Court, or by proceeding in nature of the summary Bench; Actions at Barbadoes, and in like manner in the Circuit Courts at *Trois Rivieres* and *Montreal* twice in the year; The value of *Ten* pounds is considerable in such a Colony and the reputation of the Justices of Peace is, as yet scarce enough establish'd for such a Jurisdiction; Under this *Article* We beg leave to suggest that in the Commission of the Peace for each District it may be useful and popular and endear his Majesty's Government to his new Subjects; if *one* or *Two* Canadians should be appointed Justices, with the others who are British, particularly if Protestants can be found fit for that Office.

7th The seventh and last point mentioned in the Report of the Lords of Trade, on which we shall observe, is that *Article*, wherein they propose, that in all cases where *Rights* and *Claims* are founded on events prior to the Conquest of *Canada* the several Courts shall be Govern'd in their proceedings, by French usages and customs which have heretofore prevailed in respect to such property.

This proposition is undoubtedly right, as far as it goes, in respect of Cases which happen'd, antecedent to the Conquest; but we beg leave to take occasion from hence, to enlarge a little on this subeject of the Rule of Judgment to be observed in the Courts of *Quebec* as it is of the greatest moment to the honor and Justice of the Crown, and to the peace and prosperity of the Province.

There is not a *Maxim* of the *Common Law* more certain than that a Conquer'd people retain their antient Customs till the Conqueror shall declare New Laws. To change at once the Laws and manners of a settled Country must be attended with hardship and Violence; and therefore wise Conquerers having provided for the Security of their Dominion, proceed gently and indulge their Conquer'd subjects in all local Customs which are in their own nature indifferent, and which have been received as rules of property or have obtained the force of Laws. It is the more material that this policy be persued in *Canada*; because it is a great and antient Colony long settled and much Cultivated, by French Subjects, who now inhabit it to the number of Eighty or one hundred thousand. Therefore we are humbly of opinion, that the Judges to be employed by his Majesty in this province will answer all the ends of their trust, both as to the King and to the people, if their conduct in Judicature be modell'd by the following *General* Rules.

1st *First* in all *personal* actions grounded upon Debts, promises, Contracts and Agreements, whether of a Mercantile or other nature, and upon *wrongs* proper to be compensated in damages, to reflect that the substantial *maxims* of Law and Justice are every where the same. The modes of proceeding and Trial, and perhaps in some degree also the strict Rules of Evidence may vary, but the Judges in the province of *Quebec* cannot materially err, either against the Laws of England, or the antient Customs of Canada; if in such Cases they look to those substantial maxims.

2d *Secondly* in all suits or Actions relating to Titles of Land, the Descent, Alienation, Settlements and incumbrances to *Real* property, We are humbly of opinion, that it would be oppressive to disturb without much and wise deliberation and the Aid of Laws hereafter to be enacted in the province the local Customs and Usages now prevailing there; to introduce at one Stroke the English Law of Real Estates, with English modes of Conveyancing Rules of Descent and

Construction of Deeds, must occasion infinite confusion and Injustice. British Subjects who purchase Lands there, may and ought to conform to the fix'd *local* Rules of Property in Canada, as they do in particular parts of the Realm, or in other Dominions of the Crown. The English Judges sent from hence may soon instruct themselves by the assistance of Canadian Lawyers and intelligent Persons in such Rules, and may Judge by the *Customs* of Canada, as your Lordships do in Causes from Jersey by the Custom of Normandy; It seems reasonable also, that the rules for the Distribution of personal property in Cases of Intestacy and the modes of assigning and Conveying. It should be adhered too for the present.

3d *Thirdly* in all suits entertained before the Gov'r and Council, as a Court of Chancery or Equity, it is obvious, that the General Rules of Law and Justice must be the same as in the other Courts, according to the subject matter of the suit with this difference only, that the relief is more compleat and specific, and adapted to supply the Defects, or allay the Rigor of those Rules.

4th *Fourthly* in Criminal Cases, whether they be *Capital* Offences or *Misdemeanors*, it is highly fitting (as far as may be) that the Laws of England be adapted in the Discription and Quality of the offence itself, in the manner of proceeding to charge the party to Bail or detain him. The Certainty, the Lenity of the English Administration of Justice and the Benefits of this Constitution will be more peculiarly and essentially felt by his Majesty's Canadian Subjects, in matters of Crown Law, which touch the Life, Liberty and Property of the Subject, than in the conformity of his Courts to the English Rules of *Real* and Personal Estates.

This Certainty and this Lenity are the *Benefits* intended by his Majesty's Royal proclamation, so far as concerns Judicature. *These* are *Irrevocably* Granted and ought to be secured to his Canadian subjects, according to his Royal Word. For this purpose it may not be improper upon the appointment of a new Gov'r with a *new Commission* revised and Consider'd by your Lordships, to direct that Governor to publish an explanatory proclamation in the Province, to quiet the minds of the People as to the true meaning of the Royal proclamation of Oct'r, 1763, in Respect to their local Customs and usages, more especially in Titles of Land and Cases of Real Property.

5th *Fifthly* in Rules of *process* and the *Practice* of the *Courts*. We beg leave to suggest, that it may be expedient to order the new Chief Justice,[1] with the assistance of the other Judges, to be appointed and the Attorney General [2] of Quebec to consider, and prepare a suitable *Plan* adapted to the Jurisdiction of the different Courts, and the convenience of the Suitors. The Forms of proceeding out to be simple easy and as summary and expeditious as may consist with the advancement of right and the protection of Innocence, useful hints may be taken not only from the supreme Courts of Westminster, but from the practice of the Courts in Wales, and from many of the Colonys. Some time will be necessary, before such a plan can be framed and experience alone can perfect it. As soon as they shall have prepared it, the Governor and Council may *enact* it by an *Ordinance* and transmit the same in the accustomed manner, to be laid before his Majesty for his Royal approbation.

All which is humbly submitted, &c.

C. Yorke.

April 14th, 1766. Wm. De Grey.

## XV

## ORDINANCE OF 1766

[Trans.: Shortt and Doughty.]

An ORDINANCE, *To alter and amend an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, passed the Seventeenth Day of* September, 1764.

Whereas by an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, made and passed the Seventeenth Day of September, 1764, Intitled, *An Ordinance for regulating and establishing the Courts of Judicature in this Province*; His Majesty has most graciously been pleased to signify His

[1] i.e. William Hey. For his commission, see below, No XVII.

[2] i.e. Francis Masères, who was appointed attorney-general for Quebec in March, 1766.

Royal Will and Pleasure therein, by an additional Instruction to His said Excellency the Governor, "That the Welfare and Happiness of His loving Subjects "in this Province, which will ever be Objects of His Royal Care and Attention, "do require that the said Ordinance should be altered and amended in several "Provisions of it, which tend to restrain His Canadian Subjects in those Privileges "they are intituled to enjoy in common with his natural born Subjects:" And therefore it is His further Royal Will and Pleasure, That it should be declared, And by His Honour the President of His Majesty's Council by & with the Advice, Consent & Assistance of His Majesty's Council of this Province, and by the Authority of the same, *It is hereby Ordained and Declared*, That all His Majesty's Subjects in the said Province of *Quebec*, without Distinction, are intituled to be impannelled, and to sit and act as Jurors, in all Causes civil and criminal cognizable by any of the Courts or Judicatures within the said Province.

And for the more equal and impartial Distribution of Justice, *Be it further Ordained and Declared, by the Authority aforesaid*, That in all civil Causes or Actions between British born Subjects and British born Subjects, the Juries in such Causes or Actions are to be composed of British born Subjects only; And that in all Causes or Actions between Canadians and Canadians, the Juries are to be composed of Canadians only; And that in all Causes or Actions between British born Subjects and Canadians, the Juries are to be composed of an equal Number of each, if it be required by either of the Parties in any of the above mentioned Instances.

*And be it further Ordained and Declared, by the Authority aforesaid*, That His Majesty's Canadian Subjects shall and are hereby permitted and allowed to practise as Barristers, Advocates, Attornies and Proctors, in all or any of the Courts within the said Province, under such Regulations as shall be prescribed by the said Courts respectively for Persons in general under those Descriptions.

*And be it further Ordained and Declared, by the Authority aforesaid*, That this Ordinance shall continue in Force until His Majesty's Pleasure be further known herein; and that so much of the said Ordinance of the said Seventeenth of *September*, 1764, as is not hereby altered and changed, shall and is hereby declared to be temporary only.

GIVEN *by the Honorable* PAULUS AEMILIUS IRVING, *Esq.; President of His Majesty's Council, Commander in Chief of this Province, and Lieutenant-Colonel of His Majesty's Army, at the Castle of* Saint Lewis, *in the City of* Quebec, *this* 1*st Day of* July, *in the Sixth Year of His Majesty's Reign, and in the Year of Our Lord One Thousand Seven Hundred and Sixty-six.*

P. Aemis. Irving.

## XVI

## CONSIDERATIONS [1] ON THE EXPEDIENCY OF PROCURING AN ACT OF PARLIAMENT FOR THE SETTLEMENT OF THE PROVINCE OF QUEBEC (BY BARON MASÈRES); LONDON, PRINTED IN THE YEAR MDCCLXVI

[Trans.: Shortt and Doughty.]

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Upon these reasons we may conclude, that the exercise of the Catholic religion cannot, consistently with the laws of Great Britian, be tolerated in the province of Quebec.

Yet that it should be tolerated is surely very reasonable, and to be wished by all lovers of peace and justice and liberty of conscience.

By what authority then shall it be tolerated? This is the only question that remains. Shall the King alone undertake to tolerate it? Will it be adviseable that he should exercise, though for so good an end, a power of dispensing with the laws? Will it not give room to a thousand censures and odious reflections and comparisons? The authority of Parliament seems to be a much safer foundation to establish this measure upon, in a manner which neither the new English inhabitants of the province can Contest, nor the French Catholics suspect to be inadequate.

[1] These 'considerations' were written before Masères arrived in Quebec as attorney-general. They should be compared with No. XXIV.

The next great difficulty that occurs, is the settlement of the laws, by which the province of Quebec is for the future to be governed. The law upon this subject seems to be this; 1st, That the laws of the conquered continue in force till the will of the conqueror is declared to the contrary; this follows from the necessity of the case, since otherwise the conquered provinces would be governed by no laws at all. 2dly, That after the declaration of the will of the conqueror, the conquered are to be governed by such laws as the conqueror shall think fit to impose, whether those are the old laws by which they have been governed before, or the laws by which the conquerors are governed themselves, or partly one, and partly the other, or a new set of laws different from both. 3dly, That by the conqueror is to be understood the conquering nation, that is, in the present case, the British nation; that consequently by the will of the conqueror is to be understood the will of the British nation, which in all matters relating to legislation is Expressed by the King and Parliament, as in all matters relating to the executive power it is expressed by the King alone; that therefore the Parliament only have a power to make laws for the province of Quebec, or to introduce any part of the laws of Great Britain there, or to delegate such a power of making or introducing laws to any other hands, notwithstanding it may happen that in fact such a power may inadvertently have been delegated to the governor and council of the province by a private instruction of the King alone. For if the contrary doctrine were true, that the King alone had the whole legislative power in the province of Quebec, it would follow, that not only all the conquered Canadians, but all the new English settlers there, would become slaves or subjects to an absolute and arbitrary government, the moment they set their foot there.

* * * * * *

It is therefore to be wished, that an Act of Parliament might be obtained that at once declared what laws should take place in the province of Quebec, whether the laws of the conquered, or the laws of Great Britain, or some of the laws of the conquered, and some of the laws of Great Britain; Or whether any other laws should be introduced there, more peculiarly fitted to the circumstances of the province; and if any, then what laws should be so introduced: Or, if this detail be thought too troublesome for the Parliament to enter upon, and their informations concerning the state of the province should be deemed to be as yet too imperfect to enable them to go through such a business with propriety, then it is to be wished that an act of Parliament may be obtained, by which such a legislative power of making laws and ordinances for the good government of the province might be delegated to the governor and council, as has been already exercised by them by virtue of an instruction from the King alone. By such a delegated parliamentary authority, they may enquire into the state of the Canadian laws and customs already in force there, and may revise them and reduce them into writing, and enact such of them as shall be found beneficial to the province, and fit to be continued; and may introduce such parts of the laws of England, as they shall think to be for the advantage of the province; and likewise as occasion offers, make such other new laws and regulations as shall be necessary for the good government of it: And in so doing they will have a due regard to the heads of advice suggested by Mr. Attorney Yorke, and to such other intimations and instructions as the government shall think proper to communicate to them. And lest this legislative power should be abused or injudiciously executed by the governor and council, there might be a clause in the act of Parliament directing them to transmit these several laws and ordinances to the King and Privy Council in England, to be by His Majesty in council allowed or disallowed, as his Majesty shall see cause. Only they should be in force till disallowed, and, if not disallowed within a certain time, as for instance two years, they should then be in force for ever, unless repealed by act of Parliament. Laws and ordinances founded on such a parliamentary authority will easily find obedience from the people, which it is to be feared no others will; and the judges of the province will carry them into execution with ten times as much spirit and confidence as if they were doubtful of their legal validity.

Suppose a Criminal in Canada to be guilty of an offence that is capital by the laws of England, but is not so by the laws of Canada that have hitherto been received, (a supposition that is no way difficult, as the criminal law of England abounds with capital offences), in what manner shall such a man be punished, unless there is a parliamentary declaration determining the punishment that shall attend his crime? Could any lesser authority warrant the infliction of death

for such a crime? Or would any judge chuse, though he should be sure of never being called to account for it, to pass such a sentence without the highest authority? But if the punishments of crimes be settled by authority of Parliament, whether immediately by the Parliament itself, or mediately by ordinances made by the governor and council of the province, by virtue of a legislative authority communicated to them by act of parliament, the judges will be under no other difficulty what punishments to inflict upon the several criminals, that come before them, than they are in Great Britain itself.

Some persons are of opinion, that the laws of Great Britain do at once take place in a conquered province, without any authoritative introduction of them, either by the King, or Parliament. But this opinion seems destitute of foundation, and is sufficiently refuted by the advice of the learned Mr. Yorke,[1] His Majesty's attorney-general, who has advised that the Canadians should be permitted to retain their own laws, relating to inheritances and the alienation of their real estates, which would be impossible without an act of Parliament for that purpose, if the whole System of the laws of England did ipso facto become the law of the province upon its being conquered, or ceded to the Crown. Indeed, the whole system of the laws of England, taken in the gross, and without a selection, would be by no means a blessing to the Canadians. The game-laws, the poor-laws, the fictions and subtleties in various sorts of actions and conveyances, the niceties arising from the doctrine of uses, and the tedious and operose instruments founded on them, would really be a great misfortune to them; and from their novelty and strangeness, would be thought to be a much greater. This doctrine therefore of the instant validity of the whole mass of the laws of England throughout the conquered Province cannot be true. And if the whole system of those laws is not valid there, then certainly no part of them can be so. For if they are, then who shall distinguish which of them are valid there and which are not?

It may therefore be concluded, as at first, that none of the laws of England are valid in the conquered province ipso facto by virtue of the conquest, or cession, without a positive introduction there by a sufficient authority: and this sufficient authority seems, for the reasons already mentioned, to be only the Parliament of Great Britain.

* * * * * *

As to the erecting an assembly in that province, it is a measure which probably will not for some years to come be found expedient. If an assembly were now to be constituted, and the directions in the governor's commission, above alluded to, were to be observed, by which none of the members elected there are to be permitted to sit and vote in the assembly till they have subscribed the declaration against Popery, it would amount to an exclusion of all the Canadians, that is, of the bulk of the settled inhabitants of the province.—An assembly so constituted, might pretend to be a representative of the people there, but in truth it would be a representative of only the 600 new English settlers, and an instrument in their hands of domineering over the 90,000 French. Can such an assembly be thought just or expedient, or likely to produce harmony and friendship between the two nations? Surely it must have a contrary effect.

On the other hand, it might be dangerous in these early days of their submission to admit the Canadians themselves to so great a degree of power. Bigotted, as they are, to the Popish religion, unacquainted with, and hitherto prejudiced against the laws and customs of England, they would be very unlikely for some years to come, to promote such measures, as should gradually introduce the Protestant religion, the use of the English language, of the spirit of the British laws. It is more probable they would check all such endeavours, and quarrel with the governor and council, or with the English members of the assembly, for promoting them. Add to this, that they are almost universally ignorant of the English language, so as to be absolutely incapable of debating in it, and consequently must, if such an assembly were erected, carry on the business of it in the French language, which would tend to perpetuate that language, and with it their prejudices and affections to their former masters, and postone to a very distant time, perhaps for ever, that coalition of the two nations, or the melting down the French nation into the English in point of language, affections, religion, and laws, which is so much to be wished for, and which otherwise a generation or two may perhaps effect, if proper measures are taken for that purpose. And further it may be observed, that the Canadians themselves

[1] See No. XIV.

do not desire an assembly, but are contented to be protected in the enjoyment of their religion, liberties, and properties, under the administration of his Majesty's governor and council. If, to give a proper stability to this mode of government, it is carried on by authority of Parliament, and is properly superintended, as no doubt it will be, by the wisdom of his Majesty's Privy-Council, they will think themselves extremely happy under it. The persons who most desire the immediate constitution of an assembly, are some of the six hundred English adventurers, who probably are ambitious of displaying their parts and eloquence in the characters of leading Assemblymen.

But if an assembly is to be constituted, even this too had better be done by act of Parliament than by the King's single authority, as it is no less than severing from the general body of his Majesty's dominions a particular part of them, with respect to the purposes of making laws and imposing taxes. Could the King, if he thought proper, and a particular county of England was to desire it of him, sever that county from the rest of England, and no longer summon any of its members to Parliament, but instead thereof constitute a little Parliament in that County itself, that should make laws and lay taxes for the inhabitants of that single county? It is presumed that he could not: and the erecting an assembly in a conquered province is an act of much the same nature. It is true indeed, that some of the American charters and assemblies owe their rise to this authority: but this was in the reign of the Stuarts, who were fond of extending their prerogative; and, on account of the inconsiderableness of the colonies at that time, these things were then unnoticed; so that they do not prove the strict legality of the practice. Since that time these charters have been put in practice by the colonies, and acquiesced in by the mother-country, and in some measure recognized in Parliament; and this usage, acquiescence and recognition are in truth their best support.

But if an assembly is to be constituted, in which the Catholics or Canadians are to be admitted, (as in justice and reason they ought to be, if any assembly at all is to be erected), the authority of Parliament seems to be still more necessary to give validity to such a measure.

For the reasons that have been just now mentioned, it seems evident, that the measure of erecting an assembly in the province of Quebec is somewhat premature. How soon it will become expedient and proper, experience only can shew. But in the mean time, however short that time may be, it seems necessary to have recourse to the authority of Parliament for settling the government of the province, and removing the difficulties that obstruct the settlement in the three great articles of Religion, Law and Revenue. It is therefore the humble request of all the gentlemen who have lately been appointed to the principal offices in the government of Quebec, to his Majesty's Ministers of State, that they would use their influence and endeavours to procure such an act of Parliament as they shall upon the whole matter think to be necessary, to remove the difficulties that have been stated, and to enable the said gentlemen to administer the government of that province in their several departments, with security to themselves, and advantage to the province.

## XVII

## COMMISSION OF THE CHIEF JUSTICE, 1766

[Trans.: Shortt and Doughty.]

GEORGE THE THIRD, by the Grace of God, of Great Britain, France, and Ireland, KING, Defender of the Faith, and so forth; To our Trusty and well beloved WILLIAM HEY, Esquire, Greeting.

Commission to be Chief Justice of the Province of Quebec.

Know ye, that we having taken into our Royal Consideration, Your loyalty, Integrity, and ability, Have, assigned, Constituted, and appointed, AND WE do hereby assign, Constitute, and appoint, you, the said WILLIAM HEY, our Chief Justice of, and in our Province of Quebec in America; To enquire by the Oaths of honest and lawful men of the province aforesaid, and by other lawful ways, Methods, and means, by which you can or may the better Know, as well within liberties as without, of whatsoever Treasons, misprisions of Treason, Insurrections, Rebellions, Murders, Felonies, Homicides, Killings, Burglaries, Rapes of Women, Unlawful Congregations and Assemblies, words spoken, Misprisions, Confederacies, False Allegations, Trespasses, Riots, Routs, Escapes,

Contempts, Falsities, Negligencies, Concealments, Maintenances, Oppressions, Champorties, Deceits, and other Misdoings, Offences, and Injuries whatsoever, as also of the accessories thereto within the province aforesaid, as well within liberties as without, by whomsoever and howsoever had, done, perpetrated, or Committed, or which hereafter may happen to be done, perpetrated or Committed, and by whom, to whom, when, where, and how, and of all other articles and Circumstances, the premises, or any of them, any wise Concerning: And the said treasons and other the premises to hear and determine, according to the law and Custom of that part of our Kingdom of Great Britain called England, and of our said province of Quebec, hereafter to be made. THEREFORE WE Command that, at such certain days and places as you shall appoint, You make diligent inquiry of the premises; and all and singular the premises you hear and determine; and the same do and fulfil in form aforesaid, doing therein that which to Justice doth belong or appertain, according to the Law and Custom of that part of our Kingdom of Great Britain called England, and of our said province of Quebec hereafter to be made: Saving to us our Amerciaments and other things thereby to us belonging; for we will Command all and every our Sheriffs or provost Marshal's of our province aforesaid; That at such certain days, and places as you our Chief Justice shall make known to him, them, or any of them, they cause to come then and there before you such and so many honest and lawful men of our said province as well within liberties as without, by whom the Truth of the matter may be the better Known and inquired of.

Power to inquire of all treasons felonies, and other offences;

and the same to hear and determine according to the laws of England and the ordinances of the province hereafter to be made.

AND FURTHER, KNOW YE That we have assigned, Constituted, and appointed, and by these presents, do assign, Constitute and appoint you, the said WILLIAM HEY, our Goal of our Province aforesaid, of the prisoners therein hereafter to be to deliver. AND, therefore we Command you that, at such Certain days and places as you shall appoint, you come to our Court-House of our said Province the Goal in our said province of the prisoners hereafter therein to be to deliver, doing therein what to justice doth, or may, belong or appertain, according to the Law and Custom of that part of our Kingdom of Great Britain called England, and of our said province of Quebec hereafter to be made; saving to us our amerciaments and other things thereby to us belonging: For we will Command all and every our Sheriffs and provost Marshals of our said Province of Quebec that, at such Certain days and places as you our Said Chief Justice shall make known to him, them, or any of them, they Cause to Come then and there before you our said Chief Justice all the prisoners of the same Goal and their attachments.

Power to deliver goals of prisoners therein confined.

AND FURTHER KNOW YE That we have assigned, Constituted, and appointed, and by these presents, do assign, Constitute and appoint YOU, the said WILLIAM HEY, Our Chief Justice of Our Supreme Court of Judicature of our said province of Quebec, to inquire by the oaths of honest and lawful men of the province aforesaid, and by other lawful ways, methods and means, by which you can or may the better Know, as well within Liberties as without, of all civil pleas, actions, and suits, as well real and personal, as mixed, between us and any of our Subjects, or between party and party, by whomsoever had, brought, sued and Commenced, and of all other articles and circumstances the premises, or any of them, any wise Concerning: and the said pleas, actions, and suits, and every of them, to hear and determine in manner and form aforesaid, doing therein that which to Justice doth belong and appertain according to the Laws and Customs of that part of our Kingdom of Great Britain Called England, and the Laws, Ordinances, Rules, and Regulations of our said province of Quebec, hereafter in that behalf to be Ordained and made. THEREFORE WE Command you that, at such Certain Days and places, as you shall appoint, you make diligent inquiry of the premises; and all and singular the premises to hear and determine in manner and form aforesaid, doing therein that which to justice doth belong or appertain according to the Law and Custom of that part of our Kingdom of Great Britain Called England, and the Laws, Ordinances, Rules, and Regulations, of our said province of Quebec hereafter in that behalf to be made: FOR WE will Command all and every Our Sheriffs or provost Marshal of our province aforesaid that at such Days and places, as you our Said Chief Justice shall make Known to him, them, or any of them, they Cause to Come then and there before you, such and so many honest and lawful men of our said province, as well within liberties as without, by Whom the truth of the matter may be the better Known.

Power to hear and determine all civil suits and actions, whether real, personal, or mixt, either between the King and a subject, or between subject and subject.

This Office to be held during the King's pleasure and the Chief Justice's residence in the Province.

TO HAVE, HOLD, AND EXERCISE the said Offices of our Chief Justice of and in our Said province of Quebec, for and during our Royal Will and pleasure and your Residence within our Said province; Together with all and Singular the Rights, profits, free priviledges, and Emoluments to the said Office belonging, in as full and ample manner as any other Chief Justice of any of our provinces of America HATH heretofore held and Enjoyed, or of right ought to have, hold, or Enjoy, the same with full power and authority to hold the Supreme Courts of Judicature at such places and times as the same may or ought to be held within our said province.

IN TESTIMONY whereof we have Caused these our Letters to be made patent and the Great seal of our said province of Quebec, to be hereunto Affixed, and to be entered on record in one of the Books of patents in our Registers Office of Inrollments of the said Province WITNESS Our Trusty and well beloved. The Honble. Guy Carleton, Esquire, Our Lieutenant Governor and Commander in Chief in and over our said province of Quebec and the Territories thereon depending in America, at our Castle of Saint Lewis in our said City of Quebec, The Twenty-fifth Day of September in the Year of our Lord one Thousand seven hundred and sixty-six, and in the Sixth Year of our Reign.

(Signed) GUY CARLETON.[1]

## XVIII

## REMONSTRANCE OF MEMBERS OF COUNCIL TO CARLETON[2]

[Trans.: Shortt and Doughty.]

Quebec, Octor. 13th, 1766.

We, the underwritten Members of His Majesty's Council for the Province of Quebec, think it our indispensible duty to communicate to you our sense of the method lately adopted of calling together only a part of the Council: The bad consequences which may arise from Practice are manyfold; But as you are pleased to signifye to Us by Coll. Irving that it was accident, & not Intention, it is needless for us to enumerate them.

We would be wanting to ourselves, & Others in the same Circumstances if we did not remonstrate against an opinion lately insinuated, as if Mandamus's from Brittain suspended Appointments to the Council made by Govr. Murray. We apprehend his Commission & Instructions, by which he was authorized to constitute a Council & to make choice of the Persons, to be to all Intents, & purposes, a Mandamus to each of Us, provided His Majesty did not disapprove of Us, when reported to Him by the Governour: The many Difficulties which for Two Years we had to encounter in a new Establishment for a Province under very peculiar circumstances, perhaps entitle us to some Reguard: At any Rate tho' His Majesty may have an undoubted Right to encrease the number of his Council by granting Mandamus's to whom He pleases, it is to be presumed that by so doing there is no Intention to deprive Us either of our Right to Precedence, or to a Seat in Council: A late event on the Departure of Govr. Murray is a proof of the contrary.

If by the Constitution or Custom of the Colonys the number of the Council is restricted, Mandamus's are in that Case to be regarded only as an Order for the Admission of the Persons named therein, Provided there is a Vacancy.

If the Deference which we feel for every Manifestation of the Will of our Sovereign has prevented us from objecting to any person possessed of a Mandamus from being sworn into the Council, We apprehend that if the Council is at present, or hereafter may be restricted, The Councillor last admitted is to be considered as the Supernumerary.

We have the honr. to be wth. the greatest respect Sr. yr. most obedt. hble. Servts.

(Signed) P. AEMIS. IRVING
WAR. MURRAY
ADAM MABANE
FRS. MOUNIER
JAMES CUTHBERT.

[1] Murray was recalled to England in April, 1766, but he continued to hold his office as governor. Sir Guy Carleton was appointed his deputy on April 7, 1766, with the title lieutenant-governor. He acted under the instructions given to Murray (No. VIII) until he was appointed governor in 1768, when he received a new set of Instructions addressed to himself. For his work in Canada, see Bradley, A. G., *Life of Lord Dorchester* (Oxford, 1926).

[2] These two documents (Nos XVIII and XIX) illustrate not only the difficulties which met Carleton in his new work, but also something of his methods.

## XIX

## GOVERNOR CARLETON'S REPLY

[Trans.: Shortt and Doughty.]

October, 1766.

Gentlemen

As Lieutenant Colonel Irving has signified to you, that the Part of my Conduct, you think worthy your Reprehension, happened by Accident, let him explain to you his Reasons for so doing, He had no authority from me—

But that there may be no further Doubt, I hereby make known to you, that I both have and will, on all Matters which do not require the Consent of Council, call together such Councellors as I shall think best qualified to give me Information: and further, that I will ask the Advice and Opinion of such Persons, tho' not of the Council as I shall find Men of good Sense, Truth, Candor, and Impartial Justice; persons who prefer their Duty to the King and the Tranquility of His Subjects to unjustifiable Attachments, Party Zeal, and to all selfish mercenary views: After I have obtained such Advice, I will still direct as to me shall seem best for His Majesty's Service, and the Good of His Province Committed to my Care—

I further make Known to you, and for the first time I give an Opinion, that for the present His Majesty's Council consists of twelve Members; those named and appointed immediately by the King have the Preference, next follow those appointed by Governor Murray till the Seats are all full:

You will be pleased to recollect, Gentlemen, that Mr. Stewart, tho' sworn into Council after Mr. Mounier, has by Virtue of the King's immediate Appointment constantly taken Place and Precedence of you all.

I must also remind you, that His Majesty's Service requires Tranquility and Peace in His Province of Quebec, and that it is the indispensable Duty of every good Subject, and of every honest Man, to promote so desirable an End.

(Signed) Guy Carleton.

## XX

## CARLETON TO SHELBURNE [1]

[Trans.: Shortt and Doughty.]

Quebec, 25th Nov. 1767.

My Lord,

. . . . . .

I take for granted, that the natural Rights of Men, the British Interests on this Continent, and the securing the Kings Dominions over this Province, must ever be the principal Points in View, in forming it's Civil Constitution, and Body of Laws; And that the last, is the Foundation of all, without which, other schemes can be little better than meer Castles in the Air; . . .

Having arrayed the Strength of His Majesty's old and new Subjects, and shewn the great Superiority of the Latter, it may not be amiss to observe, that there is not the least Probability, this present Superiority should ever diminish, on the Contrary 'tis more than probable it will increase and strengthen daily: The Europeans, who migrated never will prefer the long unhospitable Winters of Canada, to the more chearful Climates, and more fruitful Soil of His Majesty's Southern Provinces; The few old Subjects at present in this Province, have been mostly left here by Accident, and are either disbanded Officers, Soldiers, or Followers of the Army, who, not knowing how to dispose of themselves elsewhere, settled where they were left at the Reduction; or else they are Adventurers in Trade, or such as could not remain at Home, who set out to mend their Fortunes, at the opening of this new Channel for Commerce, but Experience has taught almost all of them, that this Trade requires a Strict Frugality, they are Strangers to, or to which they will not submit; so that some, from more advantagious Views elsewhere, others from Necessity, have already left this Province, and I greatly fear many more, for the same Reasons, will follow their Example in a few Years; But while this severe Climate, and the Poverty of the Country discourages all but the Natives, it's Healthfulness is such, that these multiply

[1] William earl of Shelburne was appointed secretary of state for the southern department on July 13, 1766.

daily, so that, barring Catastrophe shocking to think of, this Country must, to the end of Time, be peopled by the Canadian Race, who already have taken such firm Root, and got to so great a Height, that any new Stock transplanted will be totally hid, and imperceptible amongst them, except in the Towns of Quebec and Montreal. . . . . I am &c.

GUY CARLETON.

## XXI

## CARLETON TO SHELBURNE

[Trans.: Shortt and Doughty.]

Quebec, 24th Decr., 1767.

My Lord,

To conceive the true State of the People of this Province, so far as the Laws and Administration of Justice are concerned, and the Sensations, they must feel, in their present Situation, 'tis necessary to recollect, they are not a Migration of Britons, who brought with them the Laws of England, but a Populous and long established Colony, reduced by the King's Arms, to submit to His Dominion, on *certain Conditions*: That their Laws and Customs were widely Different from those of England, but founded on natural Justice and Equity, as well as these; That their Honors, Property, and Profits, as well as the King's Dues, in a great Measure Depended upon them, That, on the Mutation of Lands by sale, some special Cases excepted, they established Fines to the King, in Lieu of Quit Rents, and to the Seigneur, Fines and Dues, as his Chief Profits, Obliging him to grant his Lands at very low Rents—

This System of Laws established Subordination, from the first to the lowest, which preserved the internal Harmony, they enjoyed untill our Arrival, and secured Obedience to the Supreme Seat of Government from a very distant Province. All this Arrangement, in one Hour, We overturned, by the Ordinance of the Seventeenth of September One Thousand seven hundred and sixty four, and Laws, ill adapted to the Genius of the Canadians, to the Situation of the Province, and to the Interests of Great Britain, unknown, and unpublished were introduced in their Stead; A Sort of Severity, if I remember right, never before practiced by any Conqueror, even where the people, without Capitulation, submitted to His Will and Discretion.

How far this Change of Laws, which Deprives such Numbers of their Honors, Privileges, Profits, and Property, is conformable to the Capitulation of Montreal, and Treaty of Paris; How far this Ordinance, which affects the Life, Limb, Liberty, and Property of the Subject, is within the Limits of the Power, His Majesty has been pleased to Grant to the Governor and Council; How far this Ordinance, which in a Summary Way, Declares the Supreme Court of Judicature shall Judge all Cases Civil and Criminal by Laws unknown and unpublished to the People, is agreeable to the natural Rights of Mankind, I humbly submit; This much is certain, that it cannot long remain in Force without a General Confusion and Discontent—

* * * * * *

I am with much Respect and Esteem
Your Lordship's
Most Obedient
Humble Servant
GUY CARLETON.

## XXII

## HILLSBOROUGH[1] TO CARLETON

[Trans.: Shortt and Doughty.]

Whitehall, March the 6th, 1768.

Sir,

* * * * * *

I had the Honor to serve His Majesty at the Board of Trade, in the year 1763, when His Ma'ty was pleased to publish His Royal Proclamation relative to the new Colonies, and, whatever the legal sense conveyed by the Words of that Proclamation may be, of which I pretend not to be a Judge, I certainly know

[1] Wills, earl of Hillsborough, was appointed first secretary of state for the colonies on the creation of that department in 1768.

what was the Intention of those who drew the Proclamation, having myself been concerned therein; And I can take upon me to averr, that it never entered into Our Idea to overturn the Laws and Customs of Canada, with regard to Property, but that Justice should be administered agreably to them, according to the Modes of administering Justice in the Courts or Judicature in this Kingdom, as is the Case in the County of Kent, and many other parts of England, where Gavel-kind Borough-English and several other particular customs prevail, altho' Justice is administered therein according to the Laws of England.

It was most unfortunate for the Colony of Quebec, that weak, ignorant, and interested Men, were sent over to carry the Proclamation into Execution, who expounded it in the most absurd Manner, oppressive and cruel to the last Degree to the Subjects, and entirely contrary to the Royal Intention. The Distance of the Colony, the Difficulties arising from many Circumstances, unnecessary for me to enumerate, and the Differences of Opinion occasioned by various Causes, have prevented, as yet, the necessary Measures from being taken, to correct this original and fatal Mistake; But I trust I shall soon be impowered to signify His Majesty's Pleasure, to you, to carry into Execution, such as will not only relieve His Majesty's new Subjects from the uncertain, and consequently unhappy Situation, they are now in; but give them entire Satisfaction for the future, by securing to them their Property upon a stable Foundation, and rendering the Colony more flourishing and happy than it has ever been.

* * * * * *

I am &c.

HILLSBOROUGH.

## XXIII

## CARLETON TO SHELBURNE

[Trans.: Shortt and Doughty.]

Quebec, 20th Jan. 1768.

My Lord,

. . . . . .

I have found in Canada, what I believe may be found everywhere, The People fond of the Laws and Form of Government they have been educated under, tho' scarcely a Man that knows one sound Principle of Government, or Law; Three or four of the old Subjects, about a year ago, brought me the rough Draft of a Petition for a general Assembly, and hoped, I had no Objection to their having it signed by all the British, who wished to have one called; I told them, I had many Objections to great numbers signing a Request of any Kind, that it seldom conveyed the sincere Desire of the Subscribers, that it had an Appearance of an Intention to take away the Freedom of granting or refusing the Request; I had no Objection to Assemblies in General, yet such was the peculiar Situation of Canada, tho' I had turned that Matter often in my Thoughts, I could hit off no Plan that was not liable to many Inconveniencies, and some Danger; That perhaps they might be more fortunate, and I should think myself obliged to them, if they would shew me one, that could be of advantage to the Province, and the King's Service, assuring them, such a Plan wanted no Petitions to recommend it to me: about a Month after, they asked me, if I had considered of their Request, and I repeated my former Answer; since which I have often urged them, of my own Accord, to let me have their scheme for an Assembly, and to inform me, who they thought should be the Electors, and who the Representatives, but to no Purpose; so that I imagined, they had laid aside all Thoughts of the Kind, till lately one John McCord, who wants neither Sense nor Honesty, and formerly kept a small Ale House in the poor Suburbs of a little Country Town in the North of Ireland, appearing zealous for the Presbiterian Faith, and having made a little Money, has gained some Credit among People of his Sort; this Person purchased some Spots of Ground, and procured Grants of more, close to the Barracks, where he run up Sheds, and placed poor People to sell his Spirits to the Soldiers, finding that his lucrative Trade has lately been checked, by inclosing the Barracks to prevent the Soldiers getting drunk all Hours of the Day and Night, He has commenced Patriot, and with the Assistance of the late Attorney General, and three or four more, egged on by Letters from Home, are at work again for an Assembly, and purpose having it signed by all they can influence: On the other Hand the better Sort of Canadians fear nothing more

than popular Assemblies, which, they conceive, tend only to render the People refractory and insolent; Enquiring what they thought of them, they said, they understood some of our Colonies had fallen under the King's Displeasure, owing to the Misconduct of their Assemblies, and that they should think themselves unhappy, if a like Misfortune befell them. It may not be improper here to observe, that the British Form of Government, transplanted into this Continent, never will produce the same Fruits as at Home, chiefly, because it is impossible for the Dignity of the Throne, or Peerage to be represented in the American Forests; Besides, the Governor having little or nothing to give away, can have but little Influence; in Place of that, as it is his Duty to retain all in proper Subordination, and to restrain those Officers, who live by Fees, from running them up to Extortion; these Gentlemen, put into Offices, that require Integrity, Knowledge and Abilities, because they bid the highest Rent to the Patentee, finding themselves checked in their Views of Profit, are disposed to look on the Person, who disappoints them, as their Enemy, and without going so far as to forfeit their Employments, they in general will be shy of granting that Assistance, the King's Service may require, unless they are all equally disinterested or equally Corrupt. It therefore follows, where the executive Power is lodged with a Person of no Influence, but coldly assisted by the rest in Office, and where the two first Branches of the Legislature have neither Influence, nor Dignity, except it be from the extraordinary Characters of the Men, That a popular Assembly, which preserves it's full Vigor, and in a Country where all Men appear nearly upon a Level, must give a strong Bias to Republican Principles; Whether the Independent Spirit of a Democracy is well adapted to a subordinate Government of the British Monarchy, or their uncontrolable Notions ought to be encouraged in a Province so lately Conquered, and Circumstanced as this is, I with great Humility submit to the Superior Wisdom of His Majesty's Councils: for my own part, I shall think myself Fortunate, if I have succeeded in rendering clear Objects, not allways distinctly discernable at so great a Distance.

I am, etc.,
Sgd. GUY CARLETON.

## XXIV

To the Earl of Hillsborough

A DRAUGHT[1] of An Intended Report of the Honourable the Governor in Chief and the Council of the Province of Quebec to the King's most Excellent Majesty in his Privy Council; concerning The State of the Laws and the Administration of Justice in that Province.

[Trans.: Shortt and Doughty.]

. . . . . .

. . . His excellency has thought fit to mention only one method of settling the laws of the province, which he strongly recommends to his Majesty, as the only way of doing justice and giving satisfaction to the Canadians, which is, to continue the laws of England with respect to criminal matters, but to revive the whole body of the French laws that were in use there before the conquest with respect to civil matters . . .

. . . . . .

## XXV

## ATTORNEY GENERAL MASÈRES' CRITICISM OF GOVERNOR CARLETON'S REPORT ON THE LAWS OF THE PROVINCE, 1769

[Trans.: Shortt and Doughty.]

* * * * * *

Your Majesty's attorney general of this province approves that part of the foregoing report which gives an account of the constitution of the government of this province during it's subjection to the French king, and believes the said

[1] Francis Masères drew up a draft report on the state of law and justice in Quebec, which was handed over to Carleton on February 27, 1769. Carleton did not approve of it and another report was drawn up containing Carleton's ideas, which are those of this document. The entire report was not available when Shortt and Doughty edited their *Documents*. It has since been found, along with a lost report from the chief justice, Hey, in King's MS. 207 (Brt. Mus.), and both are printed in Kennedy, W.P.M. *The Laws of Quebec, 1767–1770*, (Ottawa, 1930.)

account to be true in most particulars; but he cannot assent to that part of the said report which suggests to your Majesty the expediency of reviving the whole of the French laws in civil matters, for the following reasons.

In the first place, he thinks it will be a deviation from that plan of conduct which your Majesty has hitherto thought fit to pursue with respect to this province ever since the conquest of it by your Majesty's arms in 1760, which he conceives to have been, to endeavour to introduce the English laws and the English manner of government into it, and thereby to assimilate and associate this province to your Majesty's other colonies in North America, and not to keep it distinct and separate from them in religion, laws, and manners, to all future generations. He conceives that if this latter system had been that which your Majesty had adopted, your Majesty would have given orders to your general, Sir Jeffery Amherst, to whom this province was surrendered, to keep up, from the first moment of the conquest, all the courts of justice that were at that time in being in the colony, and even the several officers that composed them, upon the same footing on which they then subsisted. But as your Majesty's said general did immediately suppress all the former jurisdictions, and erect military councils in their stead, and in the articles of capitulation *refused to promise the inhabitants of this province the continuance of the custom of Paris, and the other ancient laws and usages by which they had been governed*, though requested in that behalf by the French general; and as your Majesty did afterwards, in the fourth article of the definitive treaty of peace in 1763, engage to indulge your new Canadian subjects even in the delicate and important article of the free exercise of their religion, only *so far as the laws of England will permit*;—and as your Majesty, by your royal proclamation of the 7th of November,[1] 1763 did encourage your British and other ancient subjects to go and settle in this and the other new-erected governments, and did promise them, as excitement thereunto, *the immediate enjoyment of the benefit of the laws of England*;—and as your Majesty did afterwards, by your commission of vice admiral of this province granted to General Murray, *expressly introduce all the laws of the English courts of admiralty into this province*; and by your commission to the same gentleman to be captain general and governour in chief of this province, did direct him to summon an assembly of the freeholders and planters in this province, and in conjunction with them *to make laws and ordinances not repugnant to the laws of England*, by which it seems to be pre-supposed that the laws of England were already introduced there; and did in other parts of the said commission *allude to divers of the laws of England as being already in force here, as particularly the laws relating to the oaths of abjuration and supremacy, and the declaration against transubstantiation*—From these several exertions of your Majesty's royal authority in favour of the laws of England, your Majesty's attorney general of this province humbly collects it to have been your Majesty's gracious intention to assimilate this province in religion, laws, and government to the other dominions belonging to your Majesty's crown in North America; he therefore conceives that the immediate revival of all the French laws relating to civil suits in this province, in the manner suggested in the foregoing report, will have at least the appearance of a deviation from the plan of conduct which your Majesty has hitherto adopted, and of a step towards a preference of the contrary system of keeping this province distinct from and unconnected with, all your Majesty's other colonies in North America: and this appearance he humbly conceives to be itself a considerable inconvenience, and very fit to be avoided, unless very strong reasons of justice or policy made such a measure necessary, which he does not conceive to be the case; for, on the contrary, he apprehends that the said total revival of the custom of Paris, and all the other French laws relating to civil suits, will be attended with the following additional inconveniences.

In the first place, it will make it difficult for any of your Majesty's English subjects to administer justice in this province, as it will require much labour and study, and a more than ordinary acquaintance with the French language to attain a thorough knowledge of those laws.

In the next place, it will keep up in the minds of your Majesty's new Canadian subjects the remembrance of their former government, which will probably be accompanied with a desire to return to it. When they hear the custom of Paris, and the parliament of Paris, and its wise decisions, continually appealed to as the measure of justice in this country, they will be inclined to think *that* government

[1] An error for 'October.' (See No. VII.)

to be best, under which those wise laws could most ably be administered, which is that of the French king; which, together with the continuance of their attachment to the Popish religion, will keep them ever in a state of disaffection to your Majesty's government, and in a disposition to shake it off on the first opportunity that shall happen to be afforded them by any attempt of the French king to recover this country by force of arms.

And in the third place, it will discourage your Majesty's British subjects from coming to settle here when they see the country governed by a set of laws, of which they have no knowledge and against which they entertain (though perhaps unjustly) strong prejudices.

Your Majesty's attorney general of this province is further of opinion, that the body of your Majesty's new Canadian subjects are by no means either so distressed or so discontented by the introduction of the English laws into this province as they are represented in the foregoing report: at least he has seen no proofs of either such great distress or high discontent. What he has principally observed to be the subject of their complaints has been, either the expence or the dilatoriness of our law-proceedings; which he therefore conceives stand in need of reformation: and he is of opinion, that to establish three courts of general jurisdiction in all matters criminal as well as civil in the province, to sit every week in the year (with a very few exceptions) in the towns of Quebec, Three Rivers, and Montreal, would be the most adequate remedy for these complaints.

And as to the substance of the laws which are to be henceforwards admitted in this province, he conceives that the best way of all to settle these would be to make a code of them, that should contain all the laws of every kind, criminal as well as civil, that were intended to be of force here, to the exclusion of all other laws, both French and English, that were not inserted in the said code; by which means all pretence would be taken away both from the French and British inhabitants of this province for complaining that they are governed by unknown laws. This he conceives to be a work of difficulty indeed, but by no means impracticable; and he apprehends that it would be a work of very great utility to the province, even though it should be very imperfectly executed, and many important articles should happen to be omitted in it; provided only that those things that were inserted in it were useful and reasonable, and set forth in a clear and proper manner: because he apprehends that the rules so inserted would be sufficient to govern at least all the common cases that would happen in the ordinary course of human affairs, such as descents in the right line, the right of representation in grand-children whose parents are dead, the dower of widows, the rents and services due to seigniors, the obligations and duties due from them to their tenants, the seignior's right to the common mutation fines, his right of pre-emption of his tenant's land when the tenant is disposed to sell it, the rules of evidence in courts of justice, the solemnities necessary to be observed to give validity to a deed or will, and the like obvious and important matters; which would be sufficient to prevent the province from falling into confusion. And as to the nicer cases which might be omitted in such a code, they might afterwards be supplied by particular ordinances passed from time to time for that purpose.

But if this measure of making such a code of laws should not be thought adviseable, your Majesty's attorney general of this province is humbly of opinion that it would be most expedient to let the English law continue to subsist in this province as the general law of the province, and to pass an ordinance to revive those of the former French laws which relate to the tenure, inheritance, dower, alienation, and incumbrance of landed property, and to the distribution of the effects of persons who die intestate. His reasons for thinking that the French laws upon these heads ought to be revived, are as follows.

These heads of law are three in number: First, those relating to the tenures of land in this province, or the mutual obligations subsisting between landlords and tenants with respect to them. Secondly, the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbering landed property. And Thirdly, the laws relating to dower, inheritance and the distribution of the effects of persons who die intestate. And these several heads of law ought, as he humbly apprehends, to be revived in this province upon separate and distinct grounds.

The laws of tenure, he conceives, ought to be considered as having been already granted by your Majesty to your new Canadian subjects by that article in the capitulation of 1760,[1] by which your Majesty's general granted them *the*

[1] See No. V, Capitulations of Montreal, Article xxxvii.

*enjoyment of all their estates, both noble and ignoble,* and by the permission given them by your Majesty in the definitive treaty of peace in 1763,[1] to continue in the possession of them; these laws being essentially necessary to such possession and enjoyment. Such are the laws relating to the quit-rents due by the freeholders, who hold by rent-service, to the seigniors, the mutation-fines, the right of pre-emption, and the rights of escheat in certain cases; all which constitute the principal part of the property of the seigniors.

But the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbring, landed property, are not, as he apprehends, absolutely necessary to the enjoyment of the lands themselves, and therefore ought not to be reckoned quite so sacred and unchangeable as the laws of tenure themselves. Yet he conceives them to be very nearly connected with those laws, and almost dependant upon them, so that they could not be changed in any considerable degree without diminishing the value of the lands themselves, by means of the practical difficulties that would occur in making use of the new modes of conveying land that would be established in their stead; and therefore he thinks that they ought to be continued. And further, he conceives it will be the more necessary to revive or continue the French laws upon the subject, in order to prevent the introduction of the English laws upon the same subject, namely, the doctrine of estates-tail, the statute *de donis*, the method of defeating that statute by common recoveries, the doctrine of fines, the statute of uses, and the doctrine of uses in general, and other nice doctrines relating to real estates, which are full of so much subtlety, intricacy, and variety, that, if they were to be introduced into this province, they would throw all the inhabitants of it, without excepting even the English lawyers, into an inextricable maze of confusion. For these reasons he apprehends that the English laws upon this subject ought never to be introduced here; and that the former laws of the province relating to it ought for the present to be revived.

Lastly, as to the French laws concerning dower and the inheritance of lands and the distribution of the goods of intestates, with respect to such marriages as have been contracted, and such deaths as have happened, since the establishment of the civil government in this province, your Majesty's attorney general of this province is humbly of opinion, that those laws ought not to be considered as necessary appendages to the property of your Majesty's Canadian subjects in this province, and as having therefore been granted to them by implication in the articles of capitulation and the definitive treaty of peace; because they do not affect the property, or the rights, of the Canadians then in being, to whom alone those grants were made, but only guide and determine the course and devolution of that property after their deaths among persons that were then unborn. This, therefore, he conceives to be a matter upon which the authority of a legislator may properly be exercised. And he further apprehends, that in some time hence a change of the laws relating to these subjects, and especially of those relating to dower and the inheritance of land, would be highly beneficial to this province, the present excessive subdivision of the lands, by repeated partitions of them amongst numerous families, being productive of considerable inconveniences. But this, he apprehends, need not be done at present; and he conceives, that, if ever it should be thought adviseable to do it, it ought to be done by a full and express declaration beforehand of the time at which the proposed changes should take place, with a power given to such persons as disliked them to prevent their taking place in their respective families by express provisions and agreements to the contrary, and should be accompanied with such temperaments and modifications as should make the adopting them be in a manner the voluntary act of the persons who were affected by them. But for the present he conceives it might be better to postpone those important changes, and to revive the ancient laws of this province concerning inheritance and dower, and the distribution of intestates estates, as well as those relating to the tenures of land and the power and manner of aliening and mortgaging and otherwise incumbring it. And this one ordinance, reviving the said ancient laws relating to landed property and the distribution of the effects of persons who die intestate, would, as he conceives, be sufficient to preserve the tranquillity of the province, and to give satisfaction to the bulk of the Canadians: at least, he apprehends it would be enough to begin with: and if, upon trial, it should be found necessary to revive some other of the French laws that formerly subsisted in this province, it might be done by another ordinance

[1] See No. VI, Treaty of Paris, Article iv.

or two, that might be passed for that purpose, when the necessity of them should become apparent. By such an ordinance as is above mentioned passed at present, and by the establishment of an easy and cheap method of administering justice in this province with sufficient expedition, he conceives that the far greater part of your Majesty's Canadian subjects would be contented. This therefore is what he humbly presumes to recommend to your Majesty as the best method which he can suggest for the settlement of the laws of this province, after the fullest consideration of this difficult and important subject.

FRANCIS MASÈRES,
Attorney General.

Quebec, September 11th, 1769.

## XXVI

## CARLETON TO HILLSBOROUGH

[Trans.: Brymner, *Canadian Archives Report* (1890).]

Quebec, 28th March, 1770.

My Lord,

Herewith inclosed, I transmit to your Lordship an Ordinance,[1] just published to correct the ill consequences of the clause therein repealed, and to put an end to the improper and oppressive use made thereof in some Parts of this Province, a measure become so necessary to the Ease and Happiness of the People, and in the end to the King's Interests, that it would have been highly injudicious to have either delayed or suspended their Relief any longer.

Your Lordship has been already informed that the Protestants, who have settled or rather sojourned here since the Conquest, are composed only of Traders, disbanded Soldiers, and officers, the latter one or two excepted, below the Rank of Captain; of those in the Commission of the Peace, such as prospered in Business, could not give up their Time to sit as Judges, and when several from accidents and ill Judged undertakings, became Bankrupts, they naturally sought to repair their broken Fortunes at the expense of the People; Hence a variety of Schemes to increase the Business and their own Emoluments, Bailiffs, of their own creation, mostly French soldiers, either disbanded or Deserters, dispersed through the Parishes with blank Citations, catching at every little Feud or Dissension among the People, exciting them on to their Ruin, and in a manner forcing them to litigate, what, if left to themselves, might have been easily accommodated, putting them to extravagant Costs for the Recovery of very small sums, their Lands, at a time there is the greatest scarcity of money, and consequently but few Purchasers, exposed to hasty sales for Payment of the most trifling Debts, and the money arising from these sales consumed in exhorbitant Fees, whils the Creditors reap little Benefit from the Destruction of their unfortunate Debtors; This, my Lord, is but a very faint sketch of the Distresses of the Canadians, and the cause of much Reproach to our national Justice, and the King's Government.

In my last Tour through the Country, the outcry of the People was general, the inclosed copy of a Letter I received, at my return to this Place, from a very sensible old Captain of the Militia, is exactly the Language of all I met in this Progress, and some recent instances could be brought of their Resistance to Officers of Justice, acting illegally indeed, a strong symptom among many others of their Patience being near exhausted.

But among other Reasons, besides the foregoing, (which I am apt to believe, your Lordship will, however, think fully sufficient) that might be alleged for the Expediency of reducing the Justices of the Peace to nearly the same Power, they have in England, and of reviving Part of the ancient mode of administering Justice in this Province, there was one, which had due weight, and that was the confusion arising from so many different Jurisdictions, all acting upon different Ideas and Notions, to the great Perplexity of the honest Part of His Majesty's new Subjects, and of which the cunning and ill designing among them did not neglect to make their advantage; and if your Lordship only considers, that the new Residents here, since the Conquest came not only from all Parts of the King's extensive Dominions, but from all Parts of the World beside, there is no great Reason to wonder at that variety of sentiment in Regard to what is right or wrong,

[1] The ordinance is in Shortt and Doughty, pp. 401 ff.

and that in general being men of no great Learning, or extraordinary abilities, they should conform their notions of Justice, to what they had formerly seen practiced, rather than to the present circumstances of things in this Province.

By the present Plan, it is intended, that the King's Judges, paid by the Crown, may in future chiefly, if not altogether, take cognizance of matters of Property, which of course, will produce a greater uniformity in the Administration of Justice, and as these Gentlemen enjoy Salaries, it will be more incumbent upon them, in point of Interest, as well as for their Honor and Reputation, to give Satisfaction to the Publick, than it ever can be upon those, who for their daily subsistence depend meerly upon the Emolument of Office, which it will consequently ever be their Interest to enhance.

## XXVII

## CASE OF THE BRITISH MERCHANTS TRADING TO QUEBEC, 1774[1]

[Trans.: Shortt and Doughty.]

The Case of the British Merchants trading to Quebeck, and others of his Majesty's natural-born Subjects, who have been induced to venture their Property in the said Province on the Faith of his Majesty's Proclamation, and other Promises solemnly given.

The king's most excellent majesty was graciously pleased, by his royal proclamation of the seventh of October, one thousand seven hundred and sixty-three,[2] passed under the great seal of Great-Britain to invite his loving subjects, as well of his kingdoms of Great-Britain and Ireland, as of his colonies in America, to resort to the said province of Quebeck, and the other provinces then lately ceded to his majesty by the French king, in order to avail themselves, with all convenient speed, of the great benefits and advantages that must accrue therefrom to their commerce, manufactures, and navigation; and as an encouragement to them so to do, to publish and declare that his said majesty had, in the letters patent under the great seal of Great-Britain, by which the new governments in the said ceded countries had been constituted, given express power and directions to his governours in the said new colonies, *that so soon as the state and circumstances of the said new colonies would admit thereof, they should summon and call general assemblies within the said governments*, in such manner and form as is used and directed in those colonies and provinces in America which were under his majesty's immediate government; and that his majesty had also given powers to the said governours, with the consent of his majesty's councils of the said province, and the representatives of the people in the same, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes, and ordinances for the publick peace, welfare, and good government of his majesty's said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and was pleased further to declare, *that in the mean time, and until such assemblies could be called as aforesaid, all persons inhabiting in, or resorting to, his majesty's said colonies might confide in his majesty's royal protection for the enjoyment of the benefits of the laws of England*; and that for that purpose his majesty had given power, under the great seal, to the governours of his majesty's said new colonies to erect and constitute, with the advice of his majesty's councils of the said provinces respectively, courts of judicature and publick justice within the said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity *and as near as may be, agreeably to the laws of England.*

And in pursuance of the said proclamation, and of the commission of captain-general and governour in chief of the said province of Quebeck, granted to major-general Murray, in the following month of November, one thousand seven hundred and sixty-three, and by him received and published in the month of August of the following year, one thousand seven hundred and sixty-four, the said major-general Murray did, with the advice of his Majesty's council of the said province, make and publish an ordinance[3] of the said province on the seventeenth day of September, in the same year, one thousand seven hundred and sixty-four, for erecting and constituting courts of judicature; and by the said

[1] This document has been selected out a number, as it provides a good summary of the case for the minority in Canada. [2] See No. VII. [3] See No. IX.

ordinance did erect two principal courts of judicature, called the Courts of King's Bench, and Common Pleas; and did by the said ordinance give power and authority to the chief justice of the province, before whom the said court of King's Bench was to be held, to hear and determine all criminal and civil causes, agreeably to the laws of England, and the ordinances of the said province; and did likewise, by the said ordinance direct and command the judges of the said second court, called the Court of Common Pleas, to determine all matters brought before them agreeably to equity, having regard nevertheless to the laws of England, as far as the circumstances and then present situation of things would admit, until such time as proper ordinances for the information of the people could be published by the governour and council of the said province, agreeable to the laws of England.

And on the sixth day of November, in the same year, one thousand seven hundred and sixty-four, another provincial ordinance [1] was published by the said governour Murray, and his majesty's council of the said province, for the sake of quieting the minds of his majesty's new Canadian subjects, and removing the apprehensions occasioned by the said introduction of the laws of England into the said province, by which it was ordained and declared, that until the tenth day of August then next ensuing, that is, in the year of our Lord one thousand seven hundred and sixty-five, the tenures of the lands, in respect of such grants as were prior to the cession of the said province, by the definitive treaty of peace signed at Paris, on the tenth day of February, one thousand seven hundred and sixty-three, and the rights of inheritance, as practised before that period, in such lands or effects of any nature whatsoever, according to the custom of the said country, should remain to all intents and purposes the same, unless they should be altered by some declared and positive law.

And the said two ordinances have been transmitted to his majesty, and never disallowed by him, and are therefore generally understood by his majesty's British subjects in the said province, to have received the sanction of his majesty's royal approbation; and in consequence of the said two ordinances, together with the proclamation aforesaid of the seventh of October, one thousand seven hundred and sixty-three, and the two commissions of governour in chief of the said province, granted successively to major-general Murray and major-general Carleton, which seem in every part of them to pre-suppose that the laws of England were in force in the said province of Quebeck, being full of allusions and references to those laws on a variety of different subjects, and do not contain any intimation of a saving of any part of the laws and customs that prevailed in the said province in the time of the French government, we the British merchants trading to Quebeck, and all the ancient British subjects residing in the said province have been made to understand and believe, that the laws of England have been introduced into the said province, and that they have had the sanction of his majesty's royal word, that they should continue to be observed in the said province.

We cannot therefore but express our surprise and concern at hearing that a bill [2] is now brought into parliament, by which it is intended, that the said royal proclamation of October, one thousand seven hundred and sixty-three, and the commission under the authority whereof the government of the said province is at present administered, and all the ordinances of the said province, relative to the civil government and administration of justice in the same, and all commissions to judges and other officers of the same, should be revoked, annulled and made void.

We humbly beg leave to represent, that many of us have, through a confidence in the said royal proclamation, and other instruments proceeding from, and allowed by, his majesty's royal authority, ventured to send considerable quantities of merchandize into the said province, and to give large credits to divers persons residing in the same, both of his majesty's new Canadian subjects, and of his antient British subjects, who have, through a like confidence in the said proclamation, resorted to, and settled themselves in, the said province. And that we have employed our property and credit in this manner, in a firm belief, that we should have the remedies allowed us by the laws of England for the security and recovery of it; and that if we had supposed the French laws, which prevailed in the said province under the French government, to be still in force there, or to be intended to be revived in the same, we would not have had any commercial connections with

[1] See No. XII.

[2] i. e. The Quebec Act (No. XXXI).

the inhabitants of the said province, either French or English. And therefore we beg leave to represent, that we think ourselves intitled, upon the mere grounds of justice, (without desiring any favour to be shewn us on the account of our being his majesty's antient, and faithful, and protestant subjects, that are attached to his royal person and government by every tie of religion, interest, and habitual duty and affection) to insist that, if it be resolved to persist in this new measure of reviving all the former laws of Canada concerning property and civil rights, and abolishing the laws of England that have prevailed there in their stead since the establishment of the civil government in one thousand seven hundred and sixty-four, the execution thereof may at least be postponed until we shall have had sufficient time to withdraw our effects from the said province, and obtain payment of the debts which are owing to us in the same, by the remedies and methods of trial allowed and appointed by the laws of England in that behalf; through a reliance on which remedies and methods of trial we were induced to venture our said effects there, and permit those debts to be contracted. And this time, we humbly represent, cannot well be less than three years.

We further beg leave to represent, that we apprehend his majesty's former conduct in introducing the laws of England into the said province by his proclamation and other instruments aforesaid, to have been in no wise unusual, or severe, or particularly harsh, with respect to his new Canadian subjects, nor to have been unexpected by them, but to have been the natural and known consequence of the conquest and cession of the country to his majesty by the late peace, according to the policy of the crown of Great-Britain on the occasion of similar conquests in former times. And we particularly beg leave to observe, that the whole law of England has been introduced into the kingdom of Ireland, in consequence of the conquest of it by the arms of England, without any the least mixture of the antient Irish laws, even upon the subjects of tenures and descents of land; and no inconvenience has been found to follow from it; but, on the contrary, the similitude of laws is at this day a strong ground of union and mutual affection between the inhabitants of the two countries. And the like has been done with respect to the principality of Wales; in which the English law is the only law that has been allowed for more than two hundred years past: and the like good effects have followed from it. And in the last century, upon the conquest of the province of New-York, then called the New Netherlands, from the Dutch, the same policy was observed, and the Dutch laws were totally abolished, and the English laws introduced in their stead, which have prevailed there ever since. And yet, at that time, the Dutch settlers in that province were very numerous, and from them much the greater part of the present inhabitants are descended. And in conformity to these examples, we did conceive his most gracious majesty to have intended to introduce the laws of England, by his proclamation aforesaid, into the four new governments of Granada, East Florida, West Florida, and Quebeck, instead of the French and Spanish laws, which had prevailed therein under the former governments. And we conceive this conduct of his most gracious majesty, to have been no way derogatory to the articles of capitulation, granted to his Canadian subjects by general Amherst, upon the surrender of the whole country to his majesty's arms in September, one thousand seven hundred and sixty; because, when the French general expressly demanded, in one of the articles of capitulation,[1] "That the French and Canadians should continue to be governed according to the custom of Paris, and the laws and usages established for that country, and that they should not be subject to any other imposts than those that were established under the French dominion;" the said general Amherst, in his answer to the said demand, declares, "*That they become the king's subjects*;" thereby avoiding to tie up and preclude his late majesty, and his royal successors, from making such changes in the laws and taxes of the said province, as to his royal wisdom should seem meet.

We further beg leave to represent, that we are most especially anxious for the preservation of those parts of the English law which relate to matters of navigation, commerce, and personal contracts, and the method of determining disputes upon those subjects by the trial by jury, and likewise for those parts of it which relate to actions for the reparation of injuries received, such as actions of false imprisonment, and of slander, and of assault, and whatever relates to the liberty of the person, and most of all for the writ of habeas corpus, in cases of imprisonment; which we take to be, in the strongest and most proper sense of the words,

[1] See No. V, Sections 41 and 42.

*one of the benefits of the laws of England,* of which his majesty has promised us the enjoyment by his proclamation above-mentioned, and which we apprehend to be a part of the English system of jurisprudence, to which our new Canadian fellow-subjects will not object.

And we beg leave to represent, that the province of Quebeck has thriven exceedingly, both in agriculture and trade, since the establishment of the civil government of the province, and the introduction of the English laws into the same; having exported last year about three hundred and fifty thousand bushels of corn; whereas, in the time of the French government, they exported none at all, and produced hardly enough for their own subsistence.

And we further beg leave to represent, that much the greater part of this trade is carried on by his majesty's old British subjects in the said province; by which they may justly claim to themselves the merit of having been the principal promoters of the late great improvement of the province.

And we further beg leave to represent, that we by no means object to a revival or continuance of the former French laws concerning the tenures of land, and the methods of alienating and conveying land, nor even concerning the inheritance of land belonging to Canadians born, or to be born, of marriages already contracted; nor concerning dower, or the other civil rights of either men or women resulting from the matrimonial contract, so far as they relate to marriages already contracted. And we conceive that the revival of the French laws in these particulars, with full powers given to the Canadians of future times to continue them in their respective families at their pleasure by marriage-agreements, last wills, or deeds in their life-time, would be sufficient to give full satisfaction to the bulk of his majesty's new Canadian subjects, and make them acquiesce very chearfully in the general establishment of the laws of England, in conformity to his majesty's proclamation above-mentioned, upon all other matters.

And we further beg leave to represent, that several of his majesty's Old British subjects are possessed of a considerable quantity of landed property in the said province, and that others of them are daily becoming so: and hereupon we will venture to affirm, that sixteen of the seigniories of that province, and some of them the most valuable ones in the country, are in the hands of the said Old British subjects.

And we further beg leave to represent, that, in consequence of his majesty's most gracious promise contained in his proclamation aforesaid, that, as soon as the situation and circumstances of the said province would permit, an assembly of freeholders and planters of the same should be called by his majesty's governour thereof, which, in conjunction with the said governour, and his majesty's council of the said province, should have power to make laws and ordinances for the welfare and good government of the said province, we have constantly entertained hopes that an assembly of the freeholders of the same would soon be established, and that we should enjoy the benefits resulting from that free and equitable method of government in common with the inhabitants of the adjoining provinces of North-America.

And therefore we beg leave to represent, that we have been very greatly alarmed by that part of the bill now before parliament, which seems to cancel the said most gracious promise of our sovereign, and to deprive us of all hopes of obtaining the establishment of a general assembly of the freeholders of the said province, and to establish in the stead thereof a very different mode of government in the said province, by a legislative council, consisting of persons appointed by, and removeable at the pleasure of, the crown; more especially as the said new mode of government, (which we presume nothing but some urgent and very peculiar circumstances of necessity can be thought a sufficient reason for adopting) is not limited in the said bill to continue for only a certain small number of years, after which they might hope to have an assembly in the said province, agreeably to the said royal promise, but is established in very general terms, that remove that agreeable prospect out of their sight.

We further beg leave to represent, that we have hitherto been made to understand, that the reason of the omission of his majesty's governours of the said province to call a general assembly of the freeholders of the same, from the first establishment of the civil government thereof, in the year one thousand seven hundred and sixty-four, to the present time, according to the powers and directions given them by his majesty in that behalf, in their commissions of captain-general and governour in chief of the said province, has been the difficulty of

finding a sufficient number of subjects of his majesty in the said province properly qualified, in all respects, to be members of such assembly, according to the directions of the said commissions, which required, that all persons who should become members either of the said assembly of the freeholders of the said province, or of his majesty's council of the same, should take the oath of abjuration of the pope's power, and subscribe the declaration against transubstantiation, as well as take the oath of allegiance and the oath of abjuration of the pretender's right to the crown of these realms, before they were admitted to sit and vote in such assembly and council. And this objection, we beg leave to represent, is now thought, by persons well acquainted with the said province, to be at an end, there being now a sufficient number of freeholders in the said province to constitute a house of assembly, willing and ready to take the said oaths and declaration; in proof of which we beg leave to inform this honourable house, that a petition has been lately presented to his majesty from the British and protestant inhabitants of the said province, signed by a great number of persons of that description, requesting his majesty to summon and call such a general assembly of the freeholders of the said province, and assuring him that there are a sufficient number of persons in the said province qualified according to the direction of his majesty's commission for that purpose, and humbly representing to his majesty, that the situation and circumstances of the said province are at present such, as not only render the said measure of establishing a general assembly practicable, but likewise make it to be highly expedient for the regulation and improvement of the said province.

And we beg leave further to represent, that if it be thought inexpedient on the one hand to constitute a house of assembly, consisting of protestants only, agreeably to the directions of his majesty's commissions before-mentioned, on account of the great superiority of the numbers of the Roman-Catholicks in the said province, who would thereby be excluded from sitting in such assembly; and, on the other hand, it be thought dangerous to summon a general assembly into which the Roman-Catholicks should be admitted indiscriminately with the protestants; and, on account of this twofold difficulty, it be judged necessary to have recourse to the new method of government above-mentioned, by investing a council of persons nominated, and removeable at, the pleasure of the crown, with a certain degree of legislative authority; we humbly hope that the same reasons which make it be judged dangerous to admit the Roman-Catholick inhabitants of the said province into a share of the legislative authority by means of an open assembly of the same, will be thought sufficient to exclude them from obtaining a share of the same authority by an admission into this new legislative council; which, being a single body invested with the power of making laws for the province, will be of more weight and consequence in the same, than an assembly of the freeholders would be, if the plan of government promised by his majesty's proclamation and commissions above-mentioned, by a governour, council and assembly, had been pursued. And therefore we cannot but express our concern to find, that in the bill now before parliament,[1] there is no provision that all, or even any of, the members of the said intended council should of necessity be protestants, but that they may be all Roman-Catholicks notwithstanding any thing contained in the same. And therefore we most humbly and earnestly intreat this honourable house to take care that, if such a legislative council must be established in the said province, in lieu of an assembly of the freeholders of the same, the members thereof shall be all protestants; or, if that be thought too much to grant to them, that at least a majority of the members of the said council should necessarily be protestants, and only a few of the most moderate sort of Roman-Catholicks should be admitted into it, who should be required to take the oath of abjuration of the pope's authority, though not to subscribe the declaration against transubstantiation; which is a temperament, which, as we conceive, might lead to good effects hereafter.

And we further beg leave to represent both on our own account, and in behalf of our friends and correspondents, the antient British inhabitants now residing in the said province, that, if the said province must be governed by a legislative council, nominated by his majesty, without the concurrence of an assembly of the freeholders of the same, we humbly hope that a clause will be inserted in the bill, to render the members of the said council incapable of being either removed or suspended by his majesty's governour of the said province, and liable only to be removed by his majesty himself, by his order in his privy council, (of whose

[1] The Quebec Act (see No. XXXI).

wisdom and justice we can entertain no suspicion) to the end, that the said counsellors may both act with a spirit of freedom and independence becoming their high offices of legislators of the said province, and be thought to do so by the people of the same, instead of being considered as dependent creatures and tools of the will and pleasure of the governour for the time being, as we conceive will be the case, if he shall be invested with a power of removing or suspending them from their said offices at his discretion.

And we beg leave further to represent, that it is also our wish, if such a legislative council shall be established in lieu of an assembly, that the number of the members thereof may be fixed and certain, instead of being liable to vary between the numbers of seventeen and twenty-three persons, as is proposed in the present bill; and likewise, that the said council may be made as numerous as conveniently may be, to the end, that it may contain within it persons acquainted with every part of the province, and the interests of the inhabitants residing in the same, and that their acts and resolutions may be, for the most part, agreeable to the sentiments of the body of the people over whom they are to preside. And, with respect to this point, we beg leave to represent, that it is the opinion of some of the most judicious and respectable of our friends and correspondents in the said province, that it would be easy to find thirty-one persons amongst the British and other protestant inhabitants of the said province, capable of being useful members of such a council.

And we further beg leave to represent, that in case such a legislative council should be established, it is our earnest desire that provision may be made in the said bill, that a certain number of the members of the same shall be necessary to transact business; without which it may happen, that a very small part of the whole body, as, for example, five or six persons, shall occasionally exercise the great powers vested in the whole, and make laws and ordinances that shall bind all the inhabitants of the province; which, we humbly conceive, would be highly inexpedient and unbecoming, and cause great uneasiness in the said province. And we are humbly of opinion, that the number thus made necessary to the exercise of these high legislative powers, ought to be more than half the whole number of the members of such council.

And we further beg leave to suggest it as our opinion concerning this legislative council, that it would be expedient that the members thereof should receive some reasonable reward out of the publick revenue of the province, for every attendance at the meetings of the said council on the legislative business of the said province, sufficient, at least, to defray the expences of travelling to the place where the said meetings shall be held, and of residing there during the time of the said meetings; to the end, that at all the meetings of the said council, there may be a very full attendance of counsellors, who may concur in exercising the said high authority; without which, the ordinances they shall pass will not be very likely to obtain the reverence due to them from the people, nor meet with a chearful obedience.

But above all, we beg leave to repeat our most earnest hopes and desires, that the establishment of the said legislative council (if it shall be resolved that such a one shall be established), may be only for a small number of years, to the end, that, in case it shall hereafter appear to his majesty, that the situation and circumstances of the said province will admit of the summoning a general assembly of the freeholders of the same, we may at last reap the benefit of his most gracious promise to us in his proclamation and commissions above-mentioned, that we should be governed in the usual and approved method of his majesty's other colonies in America, by a governour, council, and assembly.

We therefore humbly hope, that the honourable house of commons will take our case into consideration, and permit us to be heard by our council at the bar of their house, to the several heads mentioned in this state of it, and to such other parts of the bill now before them, as we shall apprehend ourselves to be concerned in interest to object to, either on our own account, or in the behalf of our correspondents and friends, the Old British subjects of the crown now residing in the said province. And we have a firm reliance on the wisdom and justice of this honourable house, the representatives of the Commons of Great-Britain, for a satisfactory determination upon all the matters contained in this case, and upon the other points which may be submitted to their consideration by our counsel at their bar, and for the protection of our rights and liberties, as British subjects, who have acted under the sanction of his majesty's royal proclamation above-mentioned.

## XXVIII

## LORD MANSFIELD'S JUDGEMENT IN CAMPBELL v. HALL, 1774[1]

[Trans.: Shortt and Doughty.]

The case of the Island of Grenada; in relation to the payment of four and one-half in the hundred of goods imported therefrom; between Alexander Campbell, Esq., Plaintiff, and Wm. Hall, Esq., Defendant, in the Court of King's-Bench, before Lord Chief-Justice Mansfield: 15 George III, A.D. 1774.

*November* 28.

The unanimous judgment of the Court was this day given by Lord Mansfield, as follows:

This is an action brought by the plaintiff, Alexander Campbell, who is a natural-born subject of Great Britain, and who, upon the third of May, 1763, purchased lands in the island of Grenada; and it is brought against the defendant, William Hall, who was collector for His Majesty at the time of levying the imposts, and of the action brought, of a duty of four and a half per cent. upon goods exported from the island of Grenada. The action is to recover a sum of money, which was levied by the defendant and paid by the plaintiff, as for this duty of four and a half per cent. upon sugars, which were exported from the island of Grenada, from the estate and by the consignment of the plaintiff.

The action is an action for money had and received; and it is brought upon this ground, namely, that the money was paid to the defendant without consideration, the duty for which he received it not having been imposed by lawful or sufficient authority to warrant the same.

And it is stated in the special verdict that the money is not paid over, but continues in the defendant's hands, by consent of the Attorney-General, for His Majesty, in order that the question may be tried.

The special verdict states Grenada to have been conquered by the British arms from the French King in 1762; that the island was ceded by capitulation; and that the capitulation upon which it surrendered was by reference to the capitulation upon which the island of Martinico had been surrendered on the 7th of February, 1762.

The special verdict then states some articles of that capitulation, particularly the fifth, which grants that Grenada should continue to be governed by its own laws till His Majesty's pleasure be known. It next states the sixth article, where, to a demand of the inhabitants of Grenada requiring that they, as also the religious orders of both sexes, should be maintained in the property of their effects, moveable and immoveable, of what nature soever, and that they should be preserved in their privileges, rights, honours, and exemptions, the answer is that the inhabitants, being subjects of Great Britain, will enjoy their properties and the same privileges as in the other His Majesty's Leeward Islands.

Then it states another article of the capitulation, namely, the 7th article, by which they demand that they shall pay no other duties than what they before paid to the French King; that the capitation tax shall be the same, and that the expenses of the courts of justice, and of the administration of government should be paid out of the King's demesne: in answer to which they are referred to the answer I have stated, as given in the foregoing article; that is, being subjects they will be entitled in like manner as the other His Majesty's subjects in the British Leeward Islands.

The next thing stated in the special verdict is the treaty of peace signed on the 10th of February, 1763; and it states the part of the treaty of peace by which the island of Grenada is ceded, and other articles which are not material.

The next material instrument which they state is a proclamation under the Great Seal, bearing date the 7th of October, 1763, reciting thus:

"Whereas it will greatly contribute to the settling of our said islands of which "Grenada is one, that they be informed of our love and paternal care for the "liberties and rights of those who are, or shall be inhabitants thereof; we have "thought fit to publish and declare by this our proclamation, that we have by "our letters patent under our Great Seal of Great Britain, whereby our said

[1] This judgement has been printed in full because (*a*) it provides contemporary legal opinion regarding the laws of a conquered country, and (*b*) because it establishes the legal position of the Proclamation of 1763 (No. VII).

"Governments are constituted, given express power and direction to our gover-
"nors of our said colonies respectively, that so soon as the state and circumstances
"of the said colonies will admit thereof, they shall, with the advice and consent
"of our said council, call and summon general assemblies, in such manner and
"form as is used in the other colonies under our immediate government. And we
"have also given power to the said governors, with the advice and consent of our
"said council and assembly of representatives as aforesaid, to make, constitute,
"and ordain laws, statutes, and ordinances for the public peace, welfare and good
"government of our said colonies and the inhabitants thereof, as near as may be
"agreeable to the laws of England, and under such regulations and restrictions
"as are used in our other colonies."

Then follow letters patent under the Great Seal, or rather a proclamation of the 26th of March, 1764, whereby the King recites, that he had ordered a survey and division of the ceded islands, as an invitation to all purchasers to come and purchase upon certain terms and conditions specified in that proclamation.

The next instrument stated in the verdict is the letters patent bearing date the 9th of April, 1764. In these letters there is a commission appointing General Melville Governor of the island of Grenada, with power to summon an assembly as soon as the situation and circumstances of the island would admit; and to make laws in all the usual forms with reference to the manner of the other assemblies of the King's Provinces in America.

The Governor arrived in Grenada on the 14th of December, 1764; before the end of 1765, the particular day not stated, an assembly actually met; but before the arrival of the Governor at Grenada, indeed, before his Commission, and before his departure from London, there is another instrument upon the validity of which the whole question turns, which instrument contains letters patent under the Great Seal, bearing date the 20th of July, 1764, and reciting that in Barbadoes, and in all the British Leeward islands, a duty of four and a half per cent. was paid upon goods exported; and reciting further:

"Whereas it is reasonable and expedient, and of importance to our other
"sugar islands, that the like duties should take place in our said island of
"Grenada; we have thought fit, and our royal will and pleasure is, and we do
"hereby, by virtue of our prerogative Royal, order, direct, and appoint that an
"impost or customs of four and a half per cent. in specie, shall, from and after
"the 29th day of September next ensuing the date of these presents be raised
"and paid to us, our heirs and successors, for and upon all dead commodities of
"the growth or produce of our said island of Grenada that shall be shipped off
"from the same, in lieu of all customs and impost duties hitherto collected upon
"goods imported and exported into and out of the said island, under the authority
"of his Most Christian Majesty, and that the same shall be collected, &c.";

The jury find that in fact such duty of four and a half per cent. is paid to his Majesty in all the British Leeward islands. And they find several Acts of Assembly which are relative to the several islands, and which I shall not state, as they are public, and every gentleman may have access to them.

These letters patent of the 20th of July, 1764, with what I stated in the opening, are all that is material in this special verdict.

Upon the whole of the case this general question arises, being the substance of what is submitted to the Court by the verdict: "Whether these letters patent of the 20th of July, 1764, are good and valid to abrogate the French duties, and in lieu thereof to impose this duty of four and a half per cent., which is paid by all the Leeward islands subject to his Majesty."

That the letters are void has been contended at the bar, upon two points: (1) That although they had been made before the Proclamation of the 7th of October, 1763, the King by his prerogative could not have imposed them; and (2) that, although the King had sufficient authority before the 7th of October, 1763, he had divested himself of that authority by the Proclamation of that date.

A great deal has been said, and authorities have been cited relative to propositions in which both sides exactly agree, or which are too clear to be denied. The stating of these will lead us to the solution of the first point.

I will state the propositions at large:

1. A country conquered by the British arms becomes a dominion of the King in the right of his crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain.

2. The conquered inhabitants once received into the conqueror's protection

become subjects; and are universally to be considered in that light, not as enemies or aliens.

3. Articles of capitulation, upon which the country is surrendered and treaties of peace by which it is ceded, are sacred and inviolate, according to their true intent and meaning.

4. The law and legislation of every dominion equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there. Whoever purchases, sues or lives there, puts himself under the laws of the place, and in the situation of its inhabitants. An Englishman in Ireland, Minorca, the Isle of Man or the Plantations, has no privilege distinct from the natives while he continues there.

5. The laws of a conquered country continue in force until they are altered by the conqueror. The justice and antiquity of this maxim are incontrovertible; and the absurd exception as to pagans mentioned in Calvin's case, shows the universality and antiquity of the maxim. That exception could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the Crusades. In the present case the capitulation expressly provides and agrees that they shall continue to be governed by their own laws, until his Majesty's pleasure be further known.

6. If the King has power (and when I say "the King," I mean in this case "the King without the concurrence of Parliament") to alter the old and to make new laws for a conquered country—this being a power subordinate to his own authority as a part of the supreme legislature and parliament—he can make none which are contrary to fundamental principles he cannot exempt an inhabitant from the laws of trade, or the authority of Parliament, or give his privileges exclusive of his other subjects; and so in many other instances that might be put.

The present Proclamation is an Act of this subordinate legislative power. If it had been made before the 7th of October, 1763, it would have been made on the most reasonable and equitable grounds, putting the island of Grenada as to duties on the same footing as the other islands.

If Grenada paid more duties, the injury would have been to her; if less, it must have been detrimental to the other islands; nay, it would have been carrying the capitulation into execution, which gave the people of Grenada hopes that if any new duties were laid on, their condition would be the same as that of the other Leeward islands.

The only question which remains on this first point then, is, whether the King of himself had power to make such a change between the 10th of February, 1763, the day the treaty was signed, and the 7th of October, 1763.

Taking the above propositions to be granted, he has a legislative power over a conquered country, limited to him by the constitution, and subordinate to the constitution and parliament. It is left by the constitution to the King's authority to grant or refuse a capitulation. If he refuses, and puts the inhabitants to the sword, or exterminates them, all the lands belong to him; and if he plants a colony, the new settlers share the land between them, subject to the prerogative of the conqueror. If he receives the inhabitants under his protection and grants them their property, he has power to fix such terms and conditions as he thinks proper. He is entrusted with making peace at his discretion; and he may retain the conquest, or yield it up, on such condition as he pleases. These powers no man ever disputed, neither has it hitherto been controverted that the King might change part or the whole of the law or political form of government of a conquered nation.

To go into the history of conquests made by the crown of England.

The alteration of the laws of Ireland has been much discussed by lawyers and writers of great fame at different periods of time; but no man ever said the change was made by the parliament of England; no man, unless perhaps Mr. Molyneux, ever said the King could not do it. The fact, in truth, after all the researches that have been made, comes out clearly to be as laid down by Lord Chief Justice Vaughan, that Ireland received the laws of England by the charters and commands of Henry II., King John, Henry III., and he adds an *et cetera* to take in Edward I., and the successors of the princes named. That the charter of 12 King John was by assent of a parliament of Ireland, he shows clearly to be a mistake. Whenever the first parliament was called in Ireland, that change in their constitution was without an act of the parliament of England, and therefore must have been derived from the King.

Mr. Barrington is well warranted in saying that the 12th of Edward I., called the "Statute of Wales," is certainly no more than a regulation made by the King as conqueror, for the government of the country, which, the preamble says, was then totally subdued; and, however for purposes of policy he might think fit to claim it as a fief appertaining to the realm of England, he could never think himself entitled to make laws without assent of parliament to bind the subjects of any part of the realm. Therefore as he did make laws for Wales without assent of parliament, the clear consequence is that he governed it as a conquest: which was his title in fact, and the feudal right was but a fiction.

Berwick, after the conquest of it, was governed by charters from the crown, till the reign of James I., without interposition of parliament.

Whatever changes were made in the laws of Gascony, Guyenne, and Calais must have been under the King's authority; if by act of parliament, that act would be extant, for they were conquered in the reign of King Edward III.; and all the acts from that reign to the present time are extant; and in some acts of parliament there are commercial regulations relative to each of the conquests which I have named; none making any change in their constitution and laws, and particularly with regard to Calais, which is alluded to as if its laws were considered as given by the Crown. Yet as to Calais, there was a great change made in the constitution: for the inhabitants were summoned by writ to send burgesses to the English parliament; and, as this was not by act of parliament, it must have been by the sole act of the King.

Besides the garrison there are inhabitants, property, and trade at Gibraltar; the King, ever since that conquest, has from time to time made orders and regulations suitable to the condition of those who live, trade, or enjoy property in a garrison town.

Mr. Attorney-General has alluded to a variety of instances, several within these twenty years, in which the King has exercised legislation over Minorca. In Minorca, it has appeared lately, there are and have been for years back a great many inhabitants of worth and a great trade carried on. If the King does it there as coming in the place of the King of Spain, because their old constitution continues (which by the by is another proof that the constitution of England does not necessarily follow a conquest by the King of England) the same argument applies here; for before the 7th of October, 1763, the constitution of Grenada continued, and the King stood in the place of their former sovereign.

After the conquest of New York, in which most of the old Dutch inhabitants remained, King Charles II. changed its constitution and political form of government, and granted it to the Duke of York, to hold from his crown under all the regulations contained in the letters patent.

It is not to be wondered that an adjudged case in point is not to be found; no dispute ever was started before upon the King's legislative right over a conquest; it never was denied in a court of law or equity in Westminster-hall, never was questioned in parliament. Lord Coke's report of the arguments and resolutions of the judges in Calvin's case lays it down as clear (and that strange extrajudicial opinion, as to a conquest from a pagan country, will not make reason not to be reason, and law not to be law as to the rest). The book says, that "if a King"—I omit the distinction between a Christain and an infidel kingdom, which as to this purpose is wholly groundless, and most deservedly exploded—"If a King comes to a kingdom by conquest, he may, at his pleasure, alter and change the laws of that kingdom; but, until he doth make an alteration of those laws the ancient laws of that kingdom remain; but if a King hath a kingdom by title of descent, then, seeing that by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself without consent of parliament." It is plain that he speaks of his own country where there is a parliament. Also, "if a King hath a kingdom by conquest, as King Henry the Second had Ireland, after King John had given to them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding King could alter the same without parliament." Which is very just, and it necessarily includes that King John himself could not alter the grant of the laws of England.

Besides this, the authority of two great names has been cited, who took the proposition for granted. And though opinions of counsel, whether acting officially in a public charge or in private, are not properly authority on which to found a decision, yet I cite them;—not to establish so clear a point, but to shew that

when it has been matter of legal enquiry, the answer it has received, by gentlemen of eminent character and abilities in the profession, has been immediate and without hesitation, and conformable to these principles. In 1722, the assembly of Jamaica refusing the usual supplies, it was referred to Sir Philip Yorke, and Sir Clement Wearg, what was to be done if they should persist in this refusal. Their answer is—"If Jamaica was still to be considered as a conquered island, the King had a right to levy taxes upon the inhabitants; but, if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants, but by an assembly of the island, or by an act of parliament." The distinction in law between a conquered country and a colony they held to be clear and indisputable; whether, as to the case before them of Jamaica, that island remained a conquest or was made a colony, they had not examined. I have, upon former occasions, traced the constitution of Jamaica as far as there are books or papers in the offices; I cannot find that any Spaniard remained upon the island so late as the Restoration; if any, they were very few. A gentleman to whom I put the question on one of the arguments in this cause, said he knew of no Spanish names among the white inhabitants of Jamaica; but there were amongst the negroes. The King, I mean Charles the Second, after the Restoration invited settlers by proclamation, promising them his protection. He made grants of land. He appointed at first a governor and council only; afterwards he granted a commission to the governor to call an assembly. The constitution of every province immediately under the King has arisen in the same manner; not by the grants, but by commissions, to call assemblies. And therefore, all the Spaniards having left the island, or having been killed or driven out of it, Jamaica from the first settling was an English colony, who under the authority of the King planted a vacant island, belonging to him in right of his crown; like the cases of the islands of St. Helena and St. John, mentioned by Mr. Attorney-General.

A maxim of constitutional law, as declared by all the judges in Calvin's case, and which two such men in modern times as Sir Philip Yorke and Sir Clement Wearg took for granted, will acquire some authority, even if there were anything which otherwise made it doubtful; but on the contrary no book, no saying of a judge, no, not even an opinion of any counsel public or private, has been cited; no instance is to be found in any period of our history where it was ever questioned.

The counsel for the plaintiff undoubtedly labored this point from a diffidence of what might be our opinion on the second question. But upon the second point, after full consideration, we are of opinion that before the letters patent of the 20th of July, 1764, the King had precluded himself from an exercise of the legislative authority which he had before by virtue of his prerogative over the island of Grenada.

The first and material instrument is the proclamation of the 7th of October, 1763. See what it is that the King there says, and with what view he says it; how and to what he engages himself and pledges his word: "Whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are, and shall become, inhabitants thereof; we have thought fit to publish and declare by this our proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that, so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies" (and then follow the directions for that purpose). And to what end? "To make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies," of which this Grenada is one, "and of the people and inhabitants thereof, as near as may be agreeable to the laws of England." With what view is the promise given? To invite settlers; to invite subjects. Why? The reason is given. They may think their liberties and properties more secure when they have a legislative assembly than under a governor and council only. The governor and council depending on the King, he can recall them at pleasure, and give a new frame to the constitution; but not so of the other, which has a negative on those parts of the legislature which depend on the King. Therefore that assurance is given them for the security of their liberty

and properties, and with a view to invite them to go and settle there after this proclamation that assured them of the constitution under which they were to live.

The next act is of the 26th of March, 1764, which, the constitution having been established by proclamation, invites further such as shall be disposed to come and purchase, to live under the constitution. It states certain terms and conditions on which the allotments were to be taken, established with a view to permanent colonization and the increase and cultivation of the new settlement. For further confirmation of all this, on the 9th of April, 1764, three months before the impost in question was imposed, there is an actual commission to Governor Melville, to call an assembly as soon as the state and circumstances of the island should admit.—You will observe in the proclamation there is no legislature reserved to be exercised by the King, or by the governor and council under his authority, or in any other method or manner, until the assembly should be called: the promise imports the contrary; for whatever construction is to be put upon it, (which perhaps it may be somewhat difficult to pursue through all the cases to which it may be applied) it apparently considers laws then in being in the island, and to be administered by courts of justice; not an imposition of legislative authority between the time of the promise and of calling the assembly. It does not appear from the special verdict when the first assembly was called; it must have been in about a year at farthest from the governor's arrival, for the jury find he arrived in December, 1764, and that an assembly was held about the latter end of the year 1765. So that there appears to have been nothing in the state and circumstances of the island to prevent calling an assembly.

We therefore think that, by the two proclamations and the commission to Governor Melville, the King had immediately and irrevocably granted to all who were or should become inhabitants, or who had or should have property, in the island of Grenada—in general to all whom it might concern—that the subordinate legislation over the island should be exercised by an assembly, with the consent of the governor and council, in like manner as in the other provinces under the King.

Therefore, though the right of the King to have levied taxes on a conquered country, subject to him in right of his crown, was good, and the duty reasonable, equitable, and expedient, and, according to the finding of the verdict, paid in Barbadoes and all the other Leeward islands; yet by the inadvertency of the King's servants in the order in which the several instruments passed the office (for the patent of the 20th of July, 1764, for raising the impost stated, should have been first), the order is inverted, and the last we think contrary to and a violation of the first, and therefore void. How proper soever the thing may be respecting the object of these letters patent of the 26th of July, 1764, it can only now be done, to use the words of Sir Philip Yorke and Sir Clement Wearg, "by the assembly of the island, or by an act of the Parliament of Great Britain."

The consequence is, judgment must be given for the plaintiff.

## XXIX

## DEBATES IN THE BRITISH PARLIAMENT ON THE QUEBEC ACT, 1774[1]

[Trans.: Wright, *Cavendish's Debates on the Quebec Bill* (London, 1839).]

*Lord North.*—The honourable gentleman next demands of us, will you extend into those countries the free exercise of the Romish religion? Upon my word, Sir, I do not see that this bill extends it further than the ancient limits of Canada;

[1] The Quebec act was introduced in the house of lords on May 2, 1774, by Lord Dartmouth, president of the board of trade and plantations. It passed without opposition on May 17. In the house of commons it was debated from May 26 to June 13. During these debates several witnesses were examined, including Carleton, Chief Justice Hey and Masères, and some minor amendments were made.

The debate in the house of commons was begun by Thomas Townshend (afterwards viscount Sydney), who accused the government of lukewarmness and delay in relation to Canadian affairs. Lord North defended the measure through all its stages until it passed the house of commons on June 13 by a majority of twenty-six in a house of seventy-six. It was finally passed in the house of lords on June 16, by a majority of nineteen in a house of thirty-three, and received the royal assent on June 22. Lord Chatham opposed the bill in a violent speech, of which only an outline has been preserved. (See No. XXX.)

but if it should do so, the country to which it is extended is the habitation of bears and beavers; and all these regulations, which only tend to protect the trader, as far as they can protect him, undoubtedly cannot be considered oppressive to any of the inhabitants of that part of the world; who are very few, except about the coast, and at present in a very disorderly and ungovernable condition. The general purpose is undoubtedly to give a legislature to that country. It was very much, I believe, the desire of every person, if it were possible, to give it the best kind of legislature; but can a better legislature be given than that of a governor and council? The honourable gentleman dislikes the omitting the assembly; but the assembly cannot be granted, seeing that it must be composed of Canadian Roman Catholic subjects, otherwise it would be oppressive. The bulk of the inhabitants are Roman Catholics, and to subject them to an assembly composed of a few British subjects would be a great hardship. Being, therefore, under the necessity of not appointing an assembly, this is the only legislature you can give the Canadians, and it is the one under which they live at present. The governor and council really have been the legislature there ever since our conquest of it, and it is now put under some regulation. Hitherto, France has conducted the business—that is all the difference; if we do nothing, it must remain in the hands of the governor and council. The question is, whether, so regulated, this is not better. All the other colonies have been governed by a governor and council; it is not, therefore, so totally anomalous. The honourable gentleman objects to the want of a quorum. It is only giving full notice to all whose duty it is to attend, and when they do attend, things are to be decided by the majority, as in all other assemblies.

Now, Sir, with regard to giving French law—if gentlemen will remember, the most material part of the criminal law is to be according to English law. The civil law[1] of Canada certainly is to be the French law; but, Sir, I understand the establishing of these laws to be given as the basis upon which the governor and legislative council are to set out. Sir, you would not send the governor and council to choose their own constitution—to choose their own laws entirely. You must tell them from what laws they are to take their departure. It has been thought better calculated to secure the happiness of Canadians, and more beneficial for all who live in the country, that they should have the civil law of Canada, and not that of England. If the Canadian civil law is incompatible with the present condition and wishes of the colony, the governor and council will have power to alter it. But there must be a general basis; there must be a law established, ready to be amended and altered as occasions shall arise, and as the circumstances of the colony shall require. It has been the opinion of very many able lawyers, that the best way to establish the happiness of the inhabitants is to give them their own laws, as far as relates to their own possessions. Their possessions were marked out to them at the time of the treaty; to give them those possessions without giving them laws to maintain those possessions, would not be very wise. The French law may be worse than the English, but the particular portions for which we have the highest value ourselves, are a part of our political law, and a part of our criminal law. These may be acted on in Canada, seeing that the criminal law has been submitted to for nine years, and is, I dare say, approved of by the Canadians, because it is a more refined and a more merciful law than the law of France.

As to the free exercise of their religion, it likewise is no more than what is confirmed to them by the treaty, as far as the laws of Great Britain can confirm it. Now, there is no doubt that the laws of Great Britain do permit the very full and free exercise of any religion, different from that of the church of England, in any of the colonies. Our penal laws do not extend to the colonies; therefore, I apprehend, that we ought not to extend them to Canada. Whether it is convenient to continue or to abolish the bishop's jurisdiction, is another question. I cannot conceive that his presence is essential to the free exercise of religion; but I am sure that no bishop will be there under papal authority, because he will see that Great Britain will not permit any papal authority whatever in the country. It is expressly forbidden in the Act of Supremacy.

I dare say, Sir, I have not given an answer to many of the questions put to me by the honourable gentleman; nor do I recollect whether I have explained what I take to be the purpose of the present bill. It certainly gives to the Canadians

[1] The *Coutume de Paris* codified in 1510 and introduced into Canada in 1664. A detailed report on the civil law in force in French Canada was drawn up at Carleton's request and published in London in 1772.

many of their laws and customs; which laws and customs can be safely given to them. If alteration in those laws and customs should be deemed necessary, there is a legislature established, which will be ready to make those alterations. In a general plan of government, it is not possible to enter into a detail of what is proper, or what is improper, in Canada: it must be left to the legislature on the spot to consider all their wants and difficulties. The present bill will give laws, the principal laws, from which the legislature ought to take their departure—criminal law, civil law, political law. That is the purpose of the bill. It has appeared to be the best plan that could at present be devised; and it requires and deserves the immediate attention of the House. The honourable gentleman asks why, before it was introduced into the House of Lords immediately after Easter, full notice was not given, that it would come down here? Sir, we are not to blame for the omission: there is, however, abundance of time to go through the bill, to correct, to approve, or to amend it. His Majesty's message recommended Parliament to take up the subject: and as soon as it was in a fit state to be laid before the other House, I am confident the noble lord brought it forward.

Sir, the honourable gentleman proposes to limit the bill in point of time. That will be a proposition for the committee to consider: it is not now proper to be entertained. If you mean to have the bill exist even but for a year, you will read it now a second time. The question of duration is a question that will come on hereafter; it is not a proper one for the present moment. I own I shall not be for a limitation, and I shall be ready to submit my reasons; but if the committee should think proper to alter it, I must acquiesce, rather than leave the Canadians without any legislature at all. Better far to give them some legislature, than leave them for three or four years in their present situation.

The honourable gentleman put a question to me concerning a revocation of the judges' commissions. Certainly, there can be no intention to remove any of those officers who are now there. It is a happy circumstance for this country, that gentlemen of their merit should have been willing to go and establish themselves there. It is a happy circumstance for the Canadians, that they are there established: but as the form of the courts of justice is not agreeable to the practice in England, it must be altered; which will make a revocation of their commissions necessary. I dare say, and I am sure I hope, they will be given to the same individuals, who have exercised their functions so honestly. Nothing, I am confident, will stand in the way of it, but the wishes of the gentlemen themselves. I have not heard that any of them desire to quit their situations; and it most assuredly is neither the interest of his Majesty, nor that of his subjects, to desire them to quit the posts they so honourably hold. . . . .

*Mr. Dunning*—Sir, the bill is as extensive as any bill that was ever offered to the consideration of Parliament. Its direct object is to take from a large number of the King's subjects that constitution which was given to them ten years ago; to take that constitution from them, and to give them another in the place of it. Have, Sir, those subjects expressed a wish to part with what has been given them? Have they expressed a wish to have the one which is to be given in the place of it? I apprehend no such wish has been communicated to this House; and if any servant of government in that country has sent home a representation to that effect, such representation is equally unknown to me, and I apprehend to the rest of the members of this House; but if any such representation is intended to be made, I should wish this House to be acquainted with it. . . .

However, let us see, Sir, what is the form of government, for the sake of which this bill is to be supported. The form of government is this. The Roman Catholic religion is established by law. All the arguments urged by the noble lord, tending to shew that, *de jure*, the Roman Catholics are entitled to a full toleration, I admit to be well founded in law; but does that imply, that the same toleration should be given to them every where? Upon the last part of the case, different gentlemen may entertain different opinions. My opinion of toleration is, that nothing can be more impolitic than to give establishment to that religion which is not the religion of our own country. Among the circumstances that unite countries, or divide countries, a difference in religion has ever been thought to be the principal and leading one. The Catholic religion unites France, but divides England. Without going further into the subject, it suffices for me to say, that the religion of England seems to be preferable to the religion of France, if your object is to make this an English colony. When one sees that the Roman Catholic religion is established by law, and that the same law does not establish the

Protestant religion, the people are, of course, at liberty to choose which they like. Permission is given to the governor, to do what he will with the Protestant religion; and this, to those who are gone there in pursuance of the proclamation, may give encouragement; but the bill gives them none. Are we, then to establish the Roman Catholic religion, and tolerate the Protestant religion? I conceive so; for this distinction is founded in the terms of the bill.

The noble lord says, the free exercise of religion was promised by the treaty of peace—was promised by the proclamation. Does the noble lord say, that this bill gives them nothing more? If the noble lord will do me the favour of casting his eye a little down the same page, he will see that the clergy of the Roman Catholic religion are reinstated in all their accustomed rights and dues. What, Sir, are those accustomed rights and dues? I wish some gentleman would do the House the favour to inform them, what is the extent of the rights and dues of the Roman Catholic clergy. I take leave to suppose that, under the denomination of Catholic clergy, the bishop's rights and dues are included. The noble lord says, there is no papal jurisdiction. I wish to be told, what is the authority by which he becomes a bishop? I know he becomes such by consecration in France; but, in order to qualify him for this present office, the noble lord will be so good as to tell us what the act appoints. We shall then be able to judge how far he considers himself of papal constitution, or instituted by government. Sure I am, if he is allowed to exercise this right, he will be found to insist upon it.

But, Sir, the religion of the country is only one of the various objects which this bill professes to regulate and establish, throughout this vast extent of territory. The bill provides, that the laws of Canada are to be in future the laws of the country. As the bill first stood in the other House of Parliament, it was not expressed whether the laws were to be those of Canada or England. The clause stood, with the omission of those words; but Canada is now inserted, and all persons are henceforward to be subject to that law. As to all their civil rights, the noble lord has informed us, that the criminal law of England is to be preserved by this bill, agreeably to the proclamation. But, Sir, is the criminal law alone that on which we pride and value ourselves? Have we no civil law, on which we pride and value ourselves? Is there nothing at all in the constitution of England worth priding and valuing ourselves upon, but the mode of trying criminals? Is that the single circumstance that makes the English constitution valuable? This is new language to me. If that is the idea of the noble lord, I wish him joy of it; but, to do him justice, I believe he did not mean to be so understood, in the largeness of the phrase. Whoever may think the criminal laws are alone the valuable part of this constitution, I beg leave to say, that the civil distribution of justice in this country is, in my apprehension, its pride, its boast, and its glory; and that it is among the most valuable rights that any country can enjoy. To my apprehension, the trial by jury is the best adapted for the investigation of truth—for the establishing of truth—for the distributing equal justice—of any measure of which the annals of history have furnished us with any intelligence. Young, Sir, as I am in my profession, I am old enough to remember,—and it will for ever dwell in my recollection, unless driven out by the principle which the noble lord has endeavoured to establish—I am old enough to remember to have heard, that the institution of juries began at a time, and was adapted to a state of things and persons, very different from the present. To find out the time, it is necessary to contrast it with the trial by ordeal and the trial by battle. Will this earlier principle be avowed now to be the principle of the King's lawyers in this House, or the other House, or in any house?

. . . This proposed constitution for Canada does this: it denies to English subjects the English birthright, trial by jury, Sir, the most valuable of their civil rights is taken from them by this bill. The honourable gentleman near me observes, that the Habeas Corpus is among those civil rights. Is that among the laws of Canada?—I do not know what they are. I cannot put questions. I cannot see any man here who would be warranted in giving me an answer, if I did ask questions about those unknown laws of Canada. We know, however, so much of them as to know that they are adopted from France. The Canadians brought them from France; and is it not among those laws, that the governor may issue a *lettre de cachet* to send away whom he pleases, to shut up whom he pleases? I know *letires de cachet* are issued against persons not charged of any crime; not even suspected of any: some reasons have, notwithstanding, operated to make a man invisible for a time. This law of France I take to be transplanted

to Canada by this bill. By the laws of England, a man may find his remedy: the laws of Habeas Corpus are among the laws of England: they existed at common law: in some instances, they are made more beneficial by the statute law. But when the laws of Canada are looked to in order to furnish redress, the same laws will, of course, refuse any redress. Is this a trifle, to leave the people of Canada in a situation, which any man who hears me would shudder to be left in himself? Whether this legislative council has authority to add to the number of those laws—whether those laws are the groundwork, as the noble lord says, in conformity with which, according to the plan sent to them, this legislative council is expected to make new laws, in the spirit and temper of the old ones—I trust that those gentlemen who are now sending to Canada, to a district of this immense extent, a constitution of this nature, will not be found to furnish arguments in favour, either of abolishing the trial by jury, or of establishing the laws of France.

I see also, that this country is henceforward to be governed by a legislative council, consisting of seventeen at least, and not more than twenty-three. The governor may make and unmake his creatures, as they become fit tools for his purpose. They will therefore at all times, while in their senses, be solicitous and anxious in endeavouring to guard against incurring his displeasure. The minister has nothing to do but issue his order: those individuals have nothing to do but obey. He will find the inhabitants at his disposal; because the inhabitants who are at his disposal are the creatures of the minister. In my apprehension, Sir, if the King remained the sole legislator of the country, the condition of it would be better than when the governor is put in his place to exercise that power.—(Here Mr. Dunning paused a long time.)

I should have been sorry to have forgotten the avowed purpose of bringing in this bill. It is no less than to exercise, by assuming, for the purpose of exercising it, the dispensing power which, hitherto, is claimed only by the great pontiff, the pope. We are to take his place; we are to regulate, model, dispense with the King's conscience. The King, thirteen years ago, gave a constitution. The King, upon that occasion, gave encouragement to future settlers. Though the King is said to be the sole legislator, it is a strange inconsistency, that he should be hampered by his own legislation. Some doubts have arisen upon this part of the case, for want of looking forward; and the consequence is, when any temporary inconvenience arises, then a breach of the King's promise—a breach of the King's compact, is talked of: but is it fit, is it decent, that the King's word should be brought into question? But somebody else should do it for him! The King would be thought to act an unbecoming part if, in violation of his promise, he were to take from them their former constitution, and give them a different one; but it is proper enought for Parliament to do that! Sir, how comes this to be so? Have gentlemen a precedent to produce, to prove that it is proper for Parliament to do it, and not proper for the King himself to do it? But is it not, at the same time, fit that the promise should be kept? Ought you not, upon the principle of strict justice, to make some provision for persons coming to the place upon promise that the English laws should be continued, who find out that they have got into a country governed by a despotism;—that they have got into a country where the religion they carried with them has no establishment?—that they have got into a country where they are to wander throughout an immense extent of territory, or to find their way back again as they can; which they will do, when they consider the treatment they are to meet with if they remain there?

Sir, the bill professes ostensible good, but is pregnant with ostensible mischief. It is not adopted or avowed by anybody, abroad or at home. All the answer the honourable gentleman received to his question was, "this is a bill that came from the House of Lords." If that circumstance alone is sufficient reason for passing it, without any argument, to be sure the bill is so far entitled to the concurrence of this House; but if something more like a reason is thought necessary, I shall be glad to hear it; I shall be glad to have a ground to change my opinion. Until then, Sir, I shall certainly give this bill a decided negative.

*The Attorney-General* [afterwards Lord Thurlow].— . . . With regard, Sir, to the rest of the inconveniences: we have been told, that this bill proposes to take from our fellow-subjects of Canada a constitution, which has already been given, and to place them under a despotism, unfit to be established in any province belonging to Great Britain. The articles mentioned in support of this assertion are, the religion and civil law of the Canadians being established at Quebec, and the political government formerly in Canada being continued there. I will say

one word, if the House will indulge me, as to the taking away the right formerly given. Canada was a country that had been held by the French for above two hundred years before our conquest of it. It had been taken from the people of France by the King of France, and put under his immediate government, for above a hundred years before it was taken by our people. At the time of the conquest, with 120,000 souls, if I recollect right, there were about one hundred and fifty of those of the order of noblesse. The original form, not of the government, that is not said, but the original form of civil justice, under which they lived (using the word "civil" in the largest sense, for it took in both civil and criminal law), was taken from them; but there was very little of the law contained in the Parisian book carried over to the country. The reason is exceedingly obvious, because, in the establishment of a country totally new, differing in all particulars from the country of old France, it would have been the most enormous of all cruelties to have carried over a law, from the meridian of Paris, in order to put it into immediate execution in a raw, unformed province. So much as was carried over appears to have received very considerable alteration from the legislature which the King of France established there. The legislature consisted of the governor and of the council, which they called the superior council, and in which the intendant of police bore a principal part. Beyond the authority which he had as a magistrate, and as the president of the council, he had great independent authority in making laws of police; he had great independent authority in being sole judge of all causes that related to the revenue; and under that establishment the province remained for ninety or one hundred years, before it was taken by the English. When it was taken, gentlemen will be so good as to recollect upon what terms it was taken. Not only all the French who resided there had eighteen months to remove, with all their moveable effects, and such as they could not remove, they were enabled to sell; but it was expressly stipulated, that every Canadian should have the full enjoyment of all his property, particularly the religious orders of the Canadians, and that the free exercise of the Roman Catholic religion should be continued. And the definitive treaty of peace, if you examine it as far as it relates to Canada, by the cession of the late King of France to the Crown of Great Britain, was made in favour of property; made in favour of religion; made in favour of the several religious orders. In this situation it was, that the Crown of this country was called upon to form a constitution for Canada: yet, something has been thrown out, as if it was a favourite idea of certain men of this country, that the Crown should be considered as the legislator of a country newly conquered. I will not run through all the authorities, and all the arguments, which are common-place upon the subject; but I have always considered the English constitution, upon that point, to be this,—that what was conquered by the arms of England acceded to the English sovereign, which is as much as to say, to the King, Lords, and Commons of England. I have always understood, also, that it was under the authority, and in conformity with the rule and measure of law, that in every instance, through every period of English history, the King has given to newly-conquered countries their constitution; subject to be corrected by the joint interposition of the Kings, Lords, and Commons of this country; and that such constitution might be reformed, by correcting the ill advice, if any ill advice had been given, under which the King had acted, in giving them a constitution, upon the event, and at the moment, of the conquest.

Then, Sir, the question occurs—upon the conquest of this country, what was it incumbent to advise the King to do with respect to it? I have heard a great deal of the history of the famous proclamation of 1763; which, though not an act of Parliament, fares pretty much as ill as this proposed act appears to do; for I think it meets with nobody to avow it. The proclamation certainly gave no order whatever with respect to the constitution of Canada. It certainly, likewise, was not the finished composition of a very considerable and respectable person, whom I will not name, but went unfinished from his hands, and remained a good while unfinished in the hands of those to whom it was consigned afterwards. It professed to take no care of the constitution of Canada; it states all the acquisitions, both of the peopled countries and barren territories—the latter being many hundred times larger than the former—which were made in the course of the last war; and, speaking of them all in general, it declares to mankind, that his Majesty thought proper to divide them into certain distinct and separate governments; that it was in his Majesty's contemplation to give them a constitution, like that which had been given to the other colonies, as soon as the circum-

stances of the colony would admit of it; and it promised to settlers, expressly to invite them to settle, that, in the meantime, they should have the benefit of the laws of England. So ran the proclamation. Now, Sir, a proclamation conceived in this general form and applied to countries the most distant, not in situation only, but in history, character, and constitution, from each other, will scarcely, I believe, be considered as a very well studied act of state, but as necessary immediately after the conquest. But, however proper that might be with respect to new parts of such acquisitions as were not peopled before, yet, if it is to be considered according to that perverse construction of the letter of it; if it is to be considered as creating an English constitution; if it is to be considered as importing English laws into a country already settled, and habitually governed by other laws, I take it to be an act of the grossest and absurdest and cruellest tyranny, that a conquering nation ever practised over a conquered country. Look back, Sir, to every page of history, and I defy you to produce a single instance, in which a conqueror went to take away from a conquered province, by one rough stroke, the whole of their constitution, the whole of their laws under which they lived, and to impose a new idea of right and wrong, of which they could not discern the means or the end, but would find themselves at a loss, and be at an expense greater than individuals could afford, in order to inform themselves whether they were right or wrong.[1] This was a sort of cruelty, which, I believe, was never yet practised, and never ought to be. My notion, with regard to this matter, I will venture to throw out as crude and general. To enter into the subject fully, would require more discussion than the nature of such a debate as this will admit of. My notion is, that it is a change of sovereignty. You acquired a new country; you acquired a new people; but you do not state the right of conquest, as giving you a right to goods and chattels. That would be slavery and extreme misery. In order to make the acquisition either available or secure, this seems to be the line that ought to be followed—you ought to change those laws only which relate to the French sovereignty, and in their place substitute laws which should relate to the new sovereign; but with respect to all other laws, all other customs and institutions whatever, which are indifferent to the state of subjects and sovereign, humanity, justice, and wisdom equally conspire to advise you to leave them to the people just as they were. Their happiness depends upon it; their allegiance to their new sovereign depends upon it. Sir, what happened at the conquest? This proclamation being sent out in the manner mentioned, was not addressed to the Canadians. If it be true, that his Majesty may, according to the principle of law, or pursuant to the history of the law, of this country, universally and uniformly—(there is not an exception to the contrary)—give new laws to the country, in what manner is that to be done? By an instrument not addressed to them? By an instrument, so far from adding anything to their laws, not mentioning them? But, it is said, they generally did understand, that such should be their constitution, without reference to them in particular. I wish gentlemen would go back to the proclamation in 1763, and I would ask them from what expression it is, that either the Canadians can discover or English lawyers advance, that the laws of Canada were all absolutely repealed, and that a new system of justice, as well as a new system of constitution, was by that instrument introduced. Sir, the consequence of that proclamation was, that commissions were granted to the governor, in the manner they were granted to the governor of New York on a former occasion. The difference between the establishment of New York and the establishment of Canada was, as the difference of 1,700 and 120,000. It is true, there was likewise a commission of admiralty given in the English form; and a variety of other articles, known to antiquarians, not known in Canada. There was also a commission of oyer and terminer. The honourable and learned gentleman who spoke last made an objection to repealing all the present existing commissions. I do not know whether it had occurred to him to read the present existing commissions. If it had, I think he would not hesitate much upon repealing them; because the general commissions of oyer and terminer, etc., are temporary. The other commissions are, one to the court of King's Bench, and another to the court of Common Pleas. The commission to the court of King's Bench is to inquire, by the oath of good and lawful men of the country, into all crimes, causes of actions, and upon issue; jumbling together the criminal and civil jurisdiction of the country. They were framed, I believe, in Canada. How they came to be so framed, I cannot imagine. The first thing dis-

[1] See No. XXVIII.

covered was, that they were impracticable; not only impracticable with respect to the people, but impracticable with respect to the commissions themselves. The people were so ignorant, not only of the form of our law, but with respect to personal actions, that it was totally impossible to execute them. If any dispute arose, there was no instance of the Canadians resorting to the English courts of justice; but they referred it among themselves, for among themselves only could they find any idea of what they had been used to. I would ask any gentleman, whether, if the thing had been done according to some men's opinions, they could have afflicted any country with a greater curse, than an intricate system of laws, which they could not understand the terms or meaning of?

With regard to the criminal law of the country, in the first place, it is more simple, in the next place it is more compulsory; so they did, in point of fact, find their own way. The first thing that happened which I recollect in the history of Quebec, was, that the grand jury desired to have all the accounts of the province laid before them, and, in the next place, there were some very laudable, good Protestants among them, who desired that the Popery laws should be carried fully into execution. They lodged a general presentment against all the inhabitants of the colony for being Papists.

With regard to the civil laws, the whole was overturned. In their tenures, when any man found himself wronged by the French laws, he went to an English attorney, to know how to get it righted. If wronged by the English laws, he was told, that a proclamation was no law. The consequence was, that the King lost all profit from tenures; and in many other articles, such as transmutation of property, they were unwilling, because they had not the benefit of the English laws, to pay any thing to the King.

The state of confusion the country was reduced to, and individuals were reduced to, was beyond all manner of description. In this situation they remained uncorrected during all this compass of time; and now the present bill is upbraided, because it does not adopt a trial by jury, which necessarily includes the form of English actions, in a case where it would be destructive to the peace and happiness of the country. If it would make them happy, undoubtedly let us give them English laws. If the English laws would be a prejudice to them, it would be absurd tyranny and barbarity to carry over all the laws of this country, by which they would lose the comfort of their property, and in some cases the possession of it. As far as that goes, I consider it merely as a gift of the conqueror to the conquered people, whom he does not mean to treat cruelly. The criminal law stands as in England. I have observed many things exceedingly strong which have, in my poor opinion, prejudiced the Canadians against the bill; but as to the criminal law, it is certainly liable to none of the objections now urged.

The next article is with regard to religion. To take away religion is what nobody wishes. What is to be substituted in the place of it? Why, a general toleration, says my learned friend, without any kind of establishment; or if an establishment, that of the church of England; or that the church of England should at least go *pari passu* with the church of Rome. Taking it in either of those views, I fairly own, I differ very much in opinion with regard to the law of this country. By the first of Elizabeth, I take it that there is no reason whatever, why the Roman Catholic religion should not have been exercised in this country as well as in that; confining it entirely to that act, I know no reason to the contrary. The 37th article of our religion speaks in such language, that the poorest Roman Catholic, who had any sense, might use it just as much as the warmest Protestant; for the language by the act, and article, is only this, that no foreigner whatever should have any jurisdiction, power, or authority within the realm: but there is nothing in the act to prevent a man believing the infallibility of Popery, if he thinks proper to believe it. It may refer to any church in the known world. I take the act of parliament to be purely declaratory of that which is the law—of that which must be the law, in every sovereign state under heaven. Then as to the right of the clergy to their dues; the right of the bishop to his dues—these rights do not extend to his ecclesiastical functions; they extend only to that maintenance which he was possessed of before, and which was small enough before. In lieu of tithe, there was a thirteenth paid to the clergy. The bishop has always lived in a seminary; the see was not sufficient, in point of effects, to maintain him: but observe in what manner his rights are reserved. They are reserved to be exercised only with relation to such as choose to be Catholics. Nobody is compelled to be a Catholic: they are rather invited not to

be Catholics, by having an exemption held out to them. If that be the sufficient performance of the stipulation in the treaty of peace, and if the country is ready to accept of it *eo nomine*, gentlemen should make no objection to it. It is the very least that could have been given either to humanity or justice; considering them as having stipulated for that religion at the time. If I had had to prescribe what was to be given them, I should, instead of stripping the Roman Catholics of their religion, which was the religion of all temporal and all judicial authority, have thought myself bound in conscience and humanity to have allowed the religion, with one degree more of establishment, if it must be called establishment; I mean with one degree more of maintenance than it had before.

The next objection is that which relates to the governor and council. I could wish that those gentlemen who object to the legislature would be pleased to substitute something in the place of it. I have never yet heard the most sanguine of those who desire to assimilate the government of Canada to the constitution of Great Britain say, it is fit to give the Canadians a governor, council, and assembly; but if it is not fit, what kind of government would you reserve for them, preferable to the one chalked out by the bill before us? Do not let us amuse ourselves with aggravating the possible consequences which may befall the wisest constitution in the world. But how is it to be carried into execution? Why, by drawing as many of the Canadians as it is possible to do with safety to the sovereignty of Canada, into that assembly; by making it a somewhat better thing than the form of their present constitution. At present, it consists of a governor and council, with authority to make laws, which do not affect the life or limbs of any person; in which every law that has been thought necessary has been brought under a doubt, by the form in which the authority is conveyed; for if they are enabled to make only such laws as do not affect the life or limbs of any person, what law does not come within one of these bounds? It is meant to give them a more active constitution. It is confessed, on all hands, that this is essentially necessary, and that it is impracticable to put it in the form which other gentlemen seem to wish.

With regard to the question asked by the honourable gentleman, whether this is to be a permanent constitution?—whether it is wished there should be so rough a form of government established in any English province whatever?—I can only say, that unless the present government be not only objected to, but the objection so stated as to point out some period of time in which it is fancied to be right to create the assembly which is now confessed to be wrong, I do not see how it would be possible, with the fullest purpose of doing it, to assimilate that constitution, in point of form, to this. But it is to be assimilated by a new clause, to be added to the present bill! If you were to give them a very short duration of time, every body knows that the same argument against assemblies would go to the short time to be prefixed. If the idea were to make the law to last from period to period, from three years to three years, is that the method of treating the country?—giving them no hopes of permanence? But if you do not fix the time, they will not look upon this to be the constitution, nor be anxious to assimilate with it! When gentlemen apply the word "assimilation" to religion, to law, to civil laws, and to manners, I can easily conceive it is not an undesirable object in policy, that they should be so far assimilated. To a certain degree, I can conceive that the government of the country, under the present constitution, will look upon it to be their duty to assimilate the people in language, manners, and every other respect in which they can be expected to hold a more intimate connexion. But when that assimilation is proposed to be carried into the law-form of the constitution, I cannot conceive the form of the British constitution, as it stands at present, proper for them. Upon this main principle, you ought to make a repartition of the sovereignty of the country between the King and the people, of whom 558 are to be elected a parliament. On this principle, the sovereignty of this country was intended to reside, and does, in fact reside there. But do you mean to vest the sovereignty of the province, either by repartition or otherwise, in any other place than in the House of Lords and Commons of Great Britain? Yet, if you follow your assimilating idea, you must do that. I only know that none of the charters intended it. It is impossible for the King to have done it—to have created the sovereign authority of governor, council, and assembly, in any one of the provinces. In point of fact, they have considered themselves, in more views than I wish to draw into debate, masters of the sovereign power. Is their money to be applied to support the British empire? Are their forces to be

applied to the support of the British empire? Are they content that the King, Lords, and Commons of Great Britain shall be the judges of the drawing forth of those forces, and the applying of that money to the protection of the British empire? I think I drew a degree of attention and conviction, when I stated it as an absurdity, that the sovereignty of the province should be divided between the governor, council, and assembly; and to be sure it is a grossness,—it is making two allied kingdoms, totally out of our power, to act as a federal union if they please, and if they do not please, to act as an independent country—a federal condition pretty near the condition of the states of Germany. If you do not like that idea, in all the extent, in all the grossness of it, would you create a constitution in such a case which would make it, in fact, the very thing you deny in words?

The next thing that has been said is, that Englishmen carry over their constitution along with them; and in that respect it is a hard measure to take from them any of the English laws they carry over with them. I no more understand this proposition, especially as applied to the present subject, than I do the former. When the Crown of Great Britain makes a conquest of any foreign established country, if it be true that it is an article of humanity and justice to leave the country in possession of their laws, then, I say, if any English resort to the country, they do not carry the several ideas of laws that are to prevail the moment they go there: it would be just as wise to say, if an Englishman goes to Guernsey, the laws of the city of London were carried over with him. To take the laws as they stand has been allowed; to act according to those laws, and to be bound by their coercion, is a natural consequence. In this view, I think the bill has done nothing obnoxious. I have no speculative opinions. I would have consulted the French habit to a much greater extent, if it had been for me to have framed the law.

*Colonel Barré.*—. . . . Sir, the honourable and learned gentleman who spoke last has thought proper to give a short, but very imperfect, and for aught I know, a very incorrect, history of this proclamation. He says it was left in an office; it was left a sketch, and that sketch was unfinished; it was left by one noble lord, and taken up by another, who thought proper to make considerable additions to it. The honourable and learned gentleman seems to be very much displeased with this proclamation. He has reasoned against it in different parts, and stated divers inconveniences in it. I cannot help observing, that the honourable and learned gentleman seems to be more solicitous upon this occasion than the conquered inhabitants of that country, and, in some measure, more than those who have been the conquerors of it. This proclamation, Sir, gave a certain form to the colony. It provided, that the inhabitants should have an assembly, as well as all the other royal governments, as soon as possible. The proclamation held out this language, that "until such assemblies could be called, all persons inhabiting in, or resorting to, the said colonies, might confide in the royal protection for the enjoyment of the benefit of the laws of England." Under this proclamation, thus held out as a solemn act to the people of that country, many Englishmen went, and settled in the heart of Canada: but their rights, their privileges, were not thought worthy of the honourable and learned gentleman's consideration; he stood up only in defence of the Canadians: but there is a very considerable number of men, no matter of what description—they may have been poor bankrupts, but they are English subjects, who have settled there under the faith of this proclamation. The honourable and learned gentleman was not precise in stating the limits of our colonies. He seemed unwilling for the House to think that any one of the colonies, especially Pennsylvania and Virginia, had a right to settle beyond the Endless Mountains; as if the honourable and learned gentleman could be ignorant of the fact that many thousands of English subjects are established some hundred miles beyond the Endless Mountains, upon the very spot which you are now going to make a part of this country of Canada.

Sir, with respect to the Canadians themselves, the learned gentleman asks—what would you do with them? Would you do the cruellest thing that ever was done to any conquered nation upon earth? Would you take away their laws, their customs? Now, Sir, I never yet knew it was found a grievance to any nation, to give them the English laws, the English constitution. So far from it, the Canadians admired and revered those laws, as far as they could be made acquainted with them. If it is doubted, I have an evidence to produce—the honourable and learned gentleman himself. He says, "what did they do when their grand jury met? they called for their accounts, the public accounts. They

likewise wished to put in execution the Popery laws." Could there be any stronger proof in the world, that they knew the value of those laws? The criminal laws you have thought proper to give them; but you have not given them all. To my certain knowledge, they wish to have the Habeas Corpus. You have retained the civil law. What you will afterwards do to get the law administered, is to me incomprehensible. The civil law of the country stands founded upon what is called the custom of Paris. Thirty folio volumes of that custom those learned gentlemen are to make themselves masters of, and lay open to you, instead of making the English law the basis of their constitution. If any customs, or any particular laws, are applicable to the people of that country, take those customs and laws, and graft them upon the law you give them. Mr. Masères has stated his opinion to you. It is in the hands of the public: but you have not followed his advice. My honourable friend wishes an establishment of a different kind: others think the establishing such a government as this is right. One law of inheritance the Canadians complain of: the court of France has complained of it, and once attempted to correct it. It is that which the learned gentleman knows to be a custom with them; namely, the quantum taken for the crown upon the alienation of any estate; they wish to get rid of that. In short, if you had led them with any address, by degrees they would have received great part of the English law: they would have hugged it to their bosoms; they would, from time to time have abolished stated customs, and, by this time, you would have assimilated them to your constitution, and not left them standing single, as Catholics, under an arbitrary power.

Another thing I wish to notice. Has there been any application from the country? any complaint of all this chaos which the honourable gentleman has complained of? No: there is no complaint. The principal people of the country are of a very particular cast; they take a liking—this I know to be the fact—they take a liking to assemblies; they think they have as good a right to have assemblies as any other colony on the continent. It is strange, if they like this constitution, that you will not give them all the benefit and advantage of it. They ask for it; and when I say they ask for it, I do not mean to say that they have made any application in form to the court here, but they have stated their wishes to the governor there. Why not let them have assemblies? But it is said, they are not ripe for assemblies! Government has, to be sure, made use of the same argument to induce them to drop that idea. It was said, "Don't you see very plainly, that the colonies upon the continent have all of them assemblies? Don't you see they are quarrelling with their King? If you have an assembly, you will probably be in the same situation." Now, a quarrel with their King, to the Canadians, is reckoned worse than any vengeance that can be poured upon them. They will not hear of anything that would put them upon bad terms with their King. The method that I should have thought most natural, is the method recommended by Mr. Masères, which was, by degrees to introduce what is proper in your laws, and to let what is proper in the French laws remain with them.

You have determined to establish, by this bill, the Roman Catholic religion: by this bill the Roman Catholic religion has its establishment. Sir, it is very singular how this poor Roman Catholic religion has been treated: in Maryland it has been tolerated, in Ireland persecuted, in Canada you choose to give it an establishment. I do not mean to say you ought to strike at their religion. I think you ought to give it them within certain bounds. . . . .

The next thing I shall take the liberty to mention is, that this council, chosen by the governor, is to be suspended, and removable by him. It has been said, you have taken no measure to make a quorum, to say what is a board: but give me leave to tell you, from my friends, the Canadians, that the governor may summon every one of the persons, or seventeen of them; and yet he may give them to understand he does not wish to see them. In that case, not a man to whom such a hint was given would dare to show himself: to be well at court, with them, is every thing, and the court is at present the governor. I do not mean to say, that such a thing is likely to arise from the conduct of the governor there; but I have more apprehension from a wicked measure when I see an honest man is put at the head of it. I should be less alarmed at seeing this measure proposed, if he were recalled, and an unprincipled man placed at the head. This last proposition alarms me the more, because the noble lord declares, and some other gentlemen say the same, that this bill is to be perpetual. A learned gentleman near me wishes it to be temporary. Now, if there is any part of the bill that ought

to be temporary, it is this; and with respect to the law of Canada, with respect to the religion of Canada, they are two very important matters. It is not very easy to make a change in the establishment of them. With respect to religion, it is impossible to do it; but with respect to this arbitrary power it is possible, unless you mean to say, that they shall be slaves to the end of time. Though you have taken great pains to defeat the purpose of settlers, yet if the Canadians should give up their conscience a little, and accept of your religion, which is possible as many English are settled there, and you should wish to give them a legislature, by making this bill perpetual you never can do it. I may be told that the committee is the properest stage in which to discuss the bill. Certainly, we are now not a full house; but perhaps not half the present number of members may be here next day this bill is taken into consideration; and for that reason I throw out these observations. I am afraid I have detained the House too long. I have stated, very loosely, the objections I have to the bill. I have more to urge, but I do not choose to mention them in so thin a house. One thing I would say—that I look upon this measure as bad in itself, and as leading to something worse; that I foresee it will not contribute to the peace of the country for which it is intended; and that it carries in its breast something that squints and looks dangerous to the inhabitants of our other colonies in that country. Foreseeing this, and looking upon the measure in itself as a very dangerous one, I shall give my hearty negative to it in this stage.

*The Solicitor-General* [Alexander Wedderburn].—. . . . With regard, Sir, to the great point of religion, I believe I should do an injustice if I attributed to any gentleman a desire to convert the Canadians, by an act of force, to the Protestant faith. However desirable it may be, that there should be a conformity of opinion, I do not believe there are any gentlemen in this House who wish to effect the conversion of the Canadians, in any way but by the force of persuasion and conviction. Is the Roman Catholic religion made the essential article of this bill? I can see, by the article of this bill, no more than a toleration. The toleration, such as it is, is subject to the King's supremacy, as declared and established by the act of the first of Queen Elizabeth. Whatever necessity there may be for the establishment of ecclesiastical persons, it is certain they can derive no authority from the see of Rome, without directly offending against this act. That the bishop may ordain priests, and that he may dispense with marriages of cousins german, nobody will have the least objection. If the Catholic religion is to remain, the bishops must ordain priests: the worship cannot exist without priests; and there cannot be priests without bishops; unless you will permit missionaries to go from other countries to fill the cures in Canada. Of the alternative, which is the most politic?—that the priests should be bred in the country, or that the Franciscans or Dominicans should go over, and you of necessity be obliged to connive at their so doing? But then it is complained, that these clergy are to be allowed to hold, receive, and enjoy their accustomed dues and rights. What, Sir, would you tolerate their religion, and tell them, at the same time, that they shall have no priests? or would you have these priests subsist upon the casual benefactions of individuals? Is it not better that they should subsist under the authority of the state, than that these priests, who so zealously endeavour to gain an empire over the minds of the people, should be placed in a state of dependence on them for their maintenance? And further, Sir, is not all this indulgence given subject to his Majesty's approbation, and not that of any Canadian authority? and is it not provided, that nothing contained in the act shall disable his Majesty from making a provision out of the rest of the accustomed dues and rights for the Protestant clergy, in such manner as he may from time to time think necessary and expedient? So that all their tithes are subject to be taken from them, as affirmed, for a Protestant clergy. I should suspect, that the Canadians' objection would be, that this provision defeats such a re-establishment of priests as they expected from the former part of the bill; and I am sure it would be perfectly ridiculous to make a fund for the establishing of the Protestant religion, especially as there is not any great number of Protestant clergy in the country.

With regard to the civil and criminal law established by this bill, I have no difficulty to say, that the criminal law there established ought to be the law of England. I would not have compelled the Canadians to adopt the criminal law, if they had found it a hardship. I have not a doubt of the preference of either of the two codes of laws being in favour of the English. I should think it would

be so in theory, and I am confirmed in my opinion by the testimony of those gentlemen who are best acquainted with the state of Canada. I speak from the best authority, from that of the chief justice. What does he say? That the Canadians are fully sensible of the benefit of the criminal law, and that they would prefer it to the returning to the criminal law under which they lived. If we change their laws, where it is clearly for their advantage, and they are sensible of that advantage, we repair, in some measure, the evil of conquest; and this we have done, by the boon we have given them in this part of the bill. It is similar to that instance which Montesquieu quotes, of the demands of the conquering nation, that the vanquished should abolish the custom of exposing their children; which, he says, is one of the finest exercises of the power of the conquering over the conquered nation, that was ever heard of. I have no doubt the Canadians will be fully sensible of the benefits of the proposed change, and will not complain that they are subject to the English criminal law, which is mild in its punishment, and certain in its description of the offence.

With regard, Sir, to the civil law, at present to effect a change in that law, would be to deprive the Canadians of that property which they are entitled to enjoy. In civil cases, until they shall have adopted ideas very different from those which they at present entertain, certainly the trial by jury would be no blessing to them. To alter long-established habits, to create a more manly course of thinking, to make the Canadians competent judges in civil matters, must be the work of time. Individuals bred up in a country where trial by jury does not prevail, would find it very difficult to exercise the office of a juryman. They would consider it a hardship, instead of accepting it as a benefit. The introduction of it must, I repeat, be the work of time. I consider the assembly as sitting to make experiments, for the purpose of bringing the country as much as possible into that mode of living, and into those sentiments of cordiality with the Government, which the nature and habits of the people will admit. I assuredly think it desirable that they should acquire the mode of thinking of British subjects, and be brought, as much as possible, to adopt British manners; but if you alter their laws, it will be difficult to produce this change; if you alter their manners, it will be still more difficult. You must not seek to attempt it by any violent or sudden alteration; if you do, you put off the wished-for event to a greater distance, than if you suffered things to take their own course.

Another objection has been urged against the measure, which more properly belongs to the committee; namely, that there is no clause in the bill to make its operation temporary. Now, Sir, I consider this bill, in its nature, to be temporary. A bill of this kind cannot but be temporary, because it is a bill of experiment. As to how far it is adapted to the wants of that country, gentlemen differ; but I think it will bring the Canadians much more to the resemblance of British subjects than they are at present. Gentlemen who oppose this measure have not attended to two points. In the first place, will it secure the law of Canada as to civil rights? With respect to this, it makes two material alterations; one, that the property of the state may be devised by will, the other, that all land given by his Majesty may be held in free and common soccage. By these means, those lands will henceforward be held by the law of England; and no doubt the people will avail themselves of the power of devising, which that law gives them; which will bring the estate, of course, to the eldest son. This will bring them nearer to the general laws of England. But should the Canadians not be inclined to receive these alterations, they will have very little effect. I consider, therefore, this bill essentially a temporary one; but I shall be against any clause to make it so. In the first place, for what period would you take it? If for any period, it would have this bad effect with regard to the Canadians; it would hold out to them a period, when it would cease to operate, and it would induce them to be stirring up objections against it during all the term that you permitted it to be in force. If you take a long period, the effect will be the same as if it were made perpetual; if a short one, it is merely an experiment. And let me only remind gentlemen of the difficulty of fixing the period.

I have hitherto, Sir, in all I have said, considered the Canadian inhabitants as the object of the legislature. A great deal has been said with regard to the British subjects settled in Canada. Now, I confess, that the situation of the British settler is not the principal object of my attention. I do not wish to see Canada draw from this country any considerable number of her inhabitants. I think there ought to be no temptation held out to the subjects of England to quit

their native soil, to increase colonies at the expence of this country. If persons have gone thither in the course of trade, they have gone without any intention of making it their permanent residence; and, in that case, it is no more a hardship to tell them, "this is the law of the land", than it would be to say so to a man whose affairs induced him to establish himself in Guernsey, or in any other part of North America. With regard to the English who have settled there, their number is very few. They are attached to the country either in point of commercial interest, or they are attached to it from the situations they hold under government. It is one object of this measure, that these persons should not settle in Canada. The subjects of this country, in Holland, in the Baltic, and in different parts of the world, where they may go to push their commercial views, look upon England as their home; and it should be our care to keep alive in their breasts this attachment to their native soil. With regard to the other portion of the inhabitants of North America, I think the consideration alters; if the geographical limits are rightly stated. I think one great advantage of the extension of territory is this, that they will have little temptation to stretch themselves northward. I would not say, "cross the Ohio, you will find the Utopia of some great and mighty empire." I would say, "this is the border, beyond which, for the advantage of the whole empire, you shall not extend yourselves." It is a regular government; and that government will have authority to make enquiry into the views of native adventurers. As to British subjects within the limits, I believe there are not five in the whole country. I think this limitation of the boundary will be a better mode, than any restriction laid upon government. In the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and river. Upon these grounds, Sir, I think this bill ought to go to the committee. I do trust that that committee will, at least, be as well attended as this House. The project is one that deserves most serious consideration; and I am satisfied it will be the endeavour of gentlemen to make it as perfect as possible.

*Mr. Charles Fox.*—. . . . First of all, Sir, my learned friend has not sufficiently attended to what I said, that I objected as much to the levying of the tax by the House of Lords, as to the tax itself. You know how exceedingly nice we are on this point. My learned friend says, they have been in possession: now, I do not apprehend they could have any legal right, if the proclamation had any force; for that, by the laws of England, the Roman Catholic clergy should be entitled to tithes, is what I cannot comprehend. That the proclamation did not affect Canada, I have not heard my learned friend affirm. The question is, whether this be not literally giving a right to the clergy of that country; whether it be not giving them a right to exact that, which they had not a legal right to exact before this act passed? If so, it is giving a power to raise money; and we never permit bills of this nature to originate in the House of Lords. I think this objection alone fatal to the bill, without going further; but with regard to the measure itself, I will say, that it is not right for this country to originate and establish a constitution, in which there is not a spark or semblance of liberty. A learned gentleman has said, that by this means we should deter our own countrymen from settling there. Now, Sir, as it is my notion, that it is the policy of this country to induce Englishmen to mix as much as possible with the Canadians, I certainly must come to a different conclusion. Everything that forwards the learned gentleman's end, defeats my view of the subject. The learned gentleman has, too, with great ingenuity, stated the inconvenience in Canada, if we give them our laws with respect to real property. I do not suppose there is any gentleman who would approve of those laws being forced upon them; but the learned gentleman spoke, as if all civil law were comprehended in this kind of relation, which affects the descent of property, the Habeas Corpus, and all other rights. He quoted Montesquieu with approbation, about exposing children, but he says, "I cannot give the Canadians trial by jury; I cannot give them the Habeas Corpus;" which are laws of the same nature, and fully as commendable as those which prevented the exposing of children. I cannot conceive why we should not give them the law of this country. If we gave them that law, it would be easy to alter it in many respects, so as to make it agreeable to them. That, Sir, I conceive it to be the duty of this country to do; and it is very easy to do it: but to go at once, and establish a perfectly despotic government, contrary to the genius and spirit of the British constitution, carries with it the appearance of a love of despotism, and a settled design to enslave the people of America, very unbecom-

ing this country. My idea is, that America is not to be governed by force, but by affection and interest. But the Roman Catholic religion, the learned gentleman says, is not established. According to my notion, the establishment of that religion consists in government paying its teachers; and when the professors of that religion receive tithes, that, I maintain, is establishing a tax. I profess I do not myself object so much to that portion of the bill; because I think the persecution of the Roman Catholics is much to be deprecated, and that the penal laws of this country are repugnant to every principle of toleration. I think there might be, in some part of his Majesty's dominions, an asylum, where Roman Catholics might go, if persecuted. I still, however, think that this provision has not yet been distinguished from a tax; that we are now going, for the first time, to levy a tax, brought down from the House of Lords, for the support of a Roman Catholic establishment; that we are about to levy a tax on the people of Canada, for the support of a religious establishment; and that we are taking this bill of the House of Lords, when it ought to have originated here. If the Roman Catholic clergy have been in possession of a right to tithes, they must have been in possession of it from the good-will of the people of the country. If they should ever be disposed to sue for their dues, they are now to have a legal right to them, by a bill coming from the House of Lords.

*Mr. Edmund Burke.*—. . . . The learned gentleman observes, that it is a tyranny to place over a whole people a law they do not understand. But, Sir, is it not less a tyranny to place a law over them which they do not understand, than to impose upon them a law which we do not understand ourselves? Does this House know what that law and custom is which they are going to impose upon their fellow subjects? I do not condemn either the present law, or that which is proposed in its place. I will not approve the one or the other; much less attempt to impose it either upon Frenchmen or Englishmen, until I know more of the nature of those laws than I do at present. The customary law of Canada may be a defect grown up from the time of barbarism, and corrected by despotism; as in many parts of France, in many parts of Germany, and in many other parts of the world. Can we say, what is the customary law of Paris, which is going to be made law by this bill—which is going to be made law in Canada? Do we know how to modify it by the practice and admission of the civil law, which has been admitted into almost all the provinces of France? For observe, that it is not the custom of Paris, which has been mitigated by ordinances and mitigated by the civil law, which is proposed to be established; but the custom of Paris, unmitigated, unqualified, is now proposed to be established for ever, as the law of the province of Canada. I should be glad to read the clause, to see if I am right in that expression; for I could wish to be correct. In page 3, it says, that "all his Majesty's Canadian subjects shall hold and enjoy their property and possessions, etc.; and that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada." I see I was rather mistaken, and am willing to correct myself. It is not the custom of Paris that is to be established in that extent, but the custom of Canada, of which we know little or nothing. But there is something worse in the wording of this clause; for it is to be established, it is said, "in as large, ample, and beneficial manner, as if the said proclamation, commissions, ordinances, and other acts and instruments had not been made." The wording of this clause supposes, that the acts and ordinances, and law of England, had not been beneficial to the Canadians; that the law of Canada is by the English government approved; and the law of England stands condemned, as not being beneficial. Now, I should be glad to ascertain two facts; first, whether the British government is odious to the Canadians; and next, what are the excellences of that government to which we are reverting; what beneficial effects it has produced; and whether the people of Canada have flourished more under the French government, than under the English government? These are matters of fact necessary to be known, to enable us to judge of these laws. I shall never be induced to consider government in the abstract. The government under which the people have flourished most, that is the best government. I should desire to see the present state of the country compared with its state for the twelve or fourteen years preceding the troubles that gave rise to the present measure. Perhaps the people have enjoyed great benefits. If they have I would inquire, whether this proposed change must not produce great inconveniences? Until I have this light of facts, it will be impossible for me to give an honest vote, with a view to a change of the government of Canada. If you introduce laws that

have lain dormant for twelve or fourteen years, it is as much an innovation, as if you had made the constitution new. I have no objection to make the constitution new, provided the necessity of so doing is set in a clear and satisfactory manner before me. I think Parliament can proceed upon no principles but two—reason and authority. Reason we have none. The next question is, what is our authority? I believe the opinions of the learned gentlemen near me, will, must, and ought to have their due degree of weight with the House. They seldom give their authorities, without, at the same time, giving their reasons. It may be said, we have the gentlemen here, and therefore have no need for their written opinions. I should very readily agree to this, if gentlemen will tell me that these written opinions may not have been given with a greater or less degree of latitude in the council—if gentlemen will tell me that I cannot, for the sake of the public good, have those facts brought before us, which those learned gentlemen made use of to justify their own opinions. The reasons of those great law authorities, combined with the authority of those facts, must have great weight with me.

I have hitherto avoided offering a single word upon the general policy of this bill. It is said, the general provisions of the bill are to be considered in the committee, and the general argument on bringing up the report. I guard myself from this admission, upon this single question—ought not such a ground of information to be first given, as will induce you to reject the law of England, and assume the law of Canada?—that is, to reject the law which you do know, and the beneficial effects of which you have experienced, in order to impose another law upon the Canadians which you do not know, but the ill effects of which you have felt? Are you to proceed, in a manner so wild and at random, in condemning the British laws unheard, and establishing the French law in Canada? I may venture to say, "condemning" the law of England; because its condemnation is virtually made, the moment it is proved not to be beneficial to the people. I believe I am not so attached to words, as to put my own opinion in competition with that proof; but as yet I have no evidence that the people do not like our law. I do not know this to be the case. The presumption is, that the law under which they have long lived, is the law most agreeable to them. I will go upon presumption, when I have no other ground to judge upon. The law may have been more agreeable to them from their ignorance. They did not know of any better; and the moment they know some other system more beneficial, they may wish to adopt it. Until I know that the people of Canada condemn the British law, I will not impose another, which their own enlightened judgment would have rejected. Has any petition appeared before the House, to tell us the law was a burthen to them? Is either the form of trial, or the laws by which they are tried, disagreeable? What evidence have we of all this? As a friend to the people of Canada, I ask these questions. The conquest of them should not make them less dear to me: I would even treat them with a milder hand. The treaty, too, has demanded it: but until I know that the English laws are not beneficial—are not good for all men in all cases; until I know this,—until the people of Canada complain of them—I will not presume that they are opposed to them. At present, there is an English complaint against the establishing of French laws. I should be glad to hear a French complaint against the establishing of English laws; and whenever that comes, I shall be ready to give it a fair hearing. But at present, the bill stands upon no complaint. There can be no mischief in postponing it; but there may be much mischief, if you give the people French despotic government, and Canadian law, by act of parliament. By a delay of a year, they would be kept out of the advantage of having Canadian law universally established, which Canadian law universally establishes a despotism; and there is nothing left to complain of but the despotism established by necessity. At present, they bear that grievance; but a grievance by necessity, and a grievance established by law, are two very different things. Supposing the bill to be delayed for a whole year, the extent of the evil on our side will be, that we shall have more information; and as for the Canadians, they will remain a little longer in the same situation in which they are at present. If you are prepared to give them a free constitution, I should be in haste to go on; but necessity—"necessity, the tyrant's plea"—is urged for proceeding immediately.

Let us have evidence, then, of that necessity. I stand for the necessity of information; without which—without great, cogent, luminous information—I, for one, will never give my vote for establishing the French law in that country. I should be sorry to see his Majesty a despotic governor. And am I sure that this

despotism is not meant to lead to universal despotism? When that country cannot be governed as a free country, I question whether this can. No free country can keep another country in slavery. The price they pay for it will be their own servitude. The constitution proposed is one which men never will, and never ought to bear. When we are sowing the seeds of despotism in Canada, let us bear in mind, that it is a growth which may afterwards extend to other countries. By being made perpetual, it is evident that this constitution is meant to be both an instrument of tyranny to the Canadians, and an example to others of what they have to expect; at some time or other it will come home to England. When it is proved that the laws of England could not govern Canada, it will be plain that some stronger power than the laws of England is necessary to govern this country. I shall give my first vote upon this bill, against the despotic government there; whether it is to be established for any length of time, or to be established at all by Parliament. When you cannot make a free government, you ought to leave a country to be governed by the force of necessity. Government, and a free government, are two different things; but with regard to those laws which are in use at present, I cannot form an opinion—I know nothing of the custom of Canada. I should be glad to receive proper information. When I have received proper information, I will then endeavour to speak to the merits of the bill as far as I can: at present, I cannot form any opinion. I wish to have it understood, that what I have now said relates solely to the question of information. . . .

### Examination of General Carleton, Governor-General of Canada

Will you give the committee an account of the commerce and government of Canada, when you first arrived in that country as governor?—I am not prepared to give an account of the trade; it would extend very far, and require several papers which I have not here.

I beg you to give an account of the state of the government at that time.—In what respect?

I understand when you went over as governor, that you established a form of government. In what manner was the civil government carried on in Canada?—The civil government consisted of a governor and council. They were authorized to make laws and regulations in the province, under certain restrictions. Both the questions are extremely wide; I do not know precisely what the gentleman's ideas are. If I had thought it essential, I would have procured papers from the Custom-House of the imports and exports. If I had lived in the country fifty years, I should not have been able to give a precise account, without having the papers in my hand.

What was the mode of proceeding in the courts of justice when you arrived there?—The justice of the province was distributed by two courts, the Supreme Court and the Court of Common Pleas, and likewise by other courts which had power more restrained and confined than the Court of Common Pleas.

What was the form of trial in the Court of King's Bench?—I hope the committee will not expect I should state that with accuracy. The chief justice should do it. I think the Supreme Court or Court of King's Bench, was according to the English form.

*General Conway.*—I do not mean to object to the question of the honourable gentleman, but I submit to his consideration, whether as we are to hear the chief justice, and the attorney-general of Quebec, it is not more proper to put the question to them.

*Mr. Mackworth.*—Were any objections made to that mode of trial?—There are two sets of people in Canada: one, those who call themselves the ancient subjects, the other the new subjects. The first are very well satisfied with the form of justice administered in the Court of King's Bench; the other, the newly acquired subjects, are extremely satisfied with the integrity of the court, but extremely dissatisfied with the mode of trial. Their dissatisfaction arises, first from the great expense that the court draws them into; and in the next place, from all the proceedings being in a language they do not understand: they are likewise not satisfied with juries. They are extremely flattered and pleased that there are to be juries; that they are to be admitted to be of the number; but they think it very strange that the English residing in Canada should prefer to have matters of law decided by tailors and shoemakers, mixed up with respectable gentlemen in trade and commerce; that they should prefer their decision to that of the judge.

Have they been dissatisfied with the judgments that have passed in the Court of King's Bench?—I cannot say I ever heard a complaint of the kind.

If juries were composed of the species of men such as they approved of, would they disapprove of the mode of trial by jury?—The great object with the Canadians would be to procure justice; and to procure it at a reasonable and moderate expense: these are the essential points. As to the mode of trial, whether by jury or by the judge, they would prefer the latter from custom, habit, and education. I am not authorized to speak for the Canadians, to assert that they absolutely pray against juries. They certainly are attached to their own customs and manners. I am willing to give as much information as is in my power, but the chief justice is much better qualified than I am.

If the expense was moderate, and the jury composed of proper men, would they object to that mode of trial on account of thinking they should not have justice done them in the trial?—I cannot say that the Canadians would wish to adopt it: on the contrary, I have heard them make objections to it. How far those objections will carry weight, I know not.

Is not the trial by jury in the Court of Common Pleas optional?—I understand so.

Do you know that the Canadians of late, in the trials in that court, have chosen the trial by jury to decide their causes?—In general, I understand not.

Can you give any authentic account of the number of Protestant subjects now in the province of Quebec?—I had the return of the province last April of the number of Protestants in the year 1770. By that return, I believe, every body who calls himself a Protestant is included. By that account they are under four hundred men, about three hundred and sixty, besides women and children, in the whole colony of Canada. I am afraid their numbers are diminished since.

Do you think the diminution of the number of British subjects is an advantage or disadvantage to the province?—That is a political question. I am afraid their circumstances have been so reduced, as to compel them to quit the province; I speak from humanity. I do not mean to give any political opinion upon the subject.

In general, are these three hundred and sixty persons composed of men of substance and property in the province?—There are some who have purchased lands—officers, or reduced officers, some very respectable merchants; there are other inferior officers in trade, and a good many disbanded soldiers. In general, they are composed of people of small property.

What do you think may be the number of the new subjects of Canada?—About one hundred and fifty thousand souls; all Roman Catholics.

In the conversation you have had with the Canadians in general, are they not very earnest for the restitution of the ancient Canadian laws?—They were very much so, when I was in the province; and by the accounts I have received since I came to England, they still continue very earnest indeed, and anxious about it.

Have they expressed lately any apprehension on seeing plans of government sent over, that those plans should take place, or any satisfaction or desire that they should?—They have expressed great uneasiness at the apprehension, and more warmth than is usual for that people. They seem determined to form associations and compacts to resist the English law, if they should be compelled to do it, as far as they could do so with decency, and their duty to the government would permit.

Have the clergy in Canada since the peace enjoyed and received the tithes and parochial dues?—They have received the tithes and parochial dues as formerly; there may be some who have not, but very few; as few as those gentlemen who receive their rents; they are as well paid as the rents.

*Mr. Charles Fox.*—Did they receive the tithes and dues only from the Roman Catholics, or from the Protestants likewise?—I really do not know; there are so few Protestants that cultivate the land.

Was there an idea that the Protestant landholders were exempt from paying tithe?—I have heard some of the clergy say, that in the uncertain state of things, they would not ask the Protestants to pay unless they chose it: as there were opinions spread among them, that it was not agreeable to the English law to try the right, they would have to encounter the great expense of the law. I think it induced them to act with great moderation and discretion in the matter; hoping in a short time, that the laws would be ascertained, that they might know what ought to be paid and what not.

Did those few British subjects inhabit the towns of Quebec and Montreal?—Chiefly; there are very few in the country, so few, that they are scarcely to be seen in travelling through it, as there are but three hundred and sixty in a district of three hundred miles long, and very wide.

*Lord North.*—Is not the cultivation of the lands entirely in the hands of the Canadians?—Almost entirely.

What part of the trade is in the hands of the Canadians?—I have heard about two-thirds.

Is not the trade much increased?—I understand the trade is increased very much.

Do you attribute that increase to the trial by jury, or introducing so much of the English law as has been introduced?—No; they have no dependence upon that at all.

Can you assign any probable reason to what it is to be attributed?—The colony of Quebec was in its state of infancy; it is so still, in some measure. They have been now fourteen years quiet. The country has peopled very fast; besides the natural increase of population, there have been a great many Acadians, who had come into the province; people taken from America and Nova Scotia, that were scattered in the province during the course of the war. As the people multiply, they act as a sort of farmers; they take possession of the lands behind their own, so that they go on cultivating the country very fast.

Do you not think the old inhabitant in Canada is receiving considerable advantange from the change of the disposition of the inhabitants, from a military to a commercial life?—No doubt he is. Under the French government, the spirit of the government was military, and conquest was the chief object; very large detachments were sent up every year to the Ohio, and other interior parts of the continent of North America. This drew them from their land, prevented their marriages, and great numbers of them perished in those different services they were sent upon. Since the conquest, they have enjoyed peace and tranquillity; they have had more time and leisure to cultivate their land, and have had more time to extend their settlements backwards; the natural consequence of which is, that wheat is grown in great abundance. I have been very well informed that we have exported large quantities of wheat.

*Colonel Barré.*—I submit, whether it would not be better to go through one particular part first, without going into any other.

*Lord North.*—It is almost impossible. No man can know how many questions every particular member has to ask upon this point.

*Colonel Barré.*—I have only one question to ask upon that point, reserving myself to ask others; it follows from the noble lord's question. If by any means that same warlike spirit was introduced again, would it not introduce the like disagreeable and bad consequences?—I take it, that a spirit of war in that, and in all countries, is very much against population and the cultivation of land.

What measures in that country would put an end to this spirit?—Their being subdued by the people they meant to conquer.

*Lord North.*—Has not the increase of the agriculture been the principal cause of the increase of the commerce?—It is so understood.

Do you not understand, that the great capitals of our merchants, their great knowledge, and their spirit in trade, have likewise contributed to the increase of it?—I believe they may have been of advantage.

Are the Canadian inhabitants desirous of having assemblies in the province?—Certainly not.

Have they not thought with horror of an assembly in the country, if it should be composed of the old British inhabitants now resident there?—No doubt it would give them great offence.

Would they not greatly prefer a government by the governor and legislative council to such an assembly?—No doubt they would.

Do you not think a free exportation of corn contributed to the encouragement of population and agriculture, as much as any of the foregoing causes?—The population was the first effect; the cultivation of the land was the consequence.

Was it necessary to have any land to be qualified to serve on a jury in the country?—I believe there is very little nicety in that matter; there is too great a scarcity of Protestants. I beg leave to add, in the list of jurors I mentioned, there were a great number of disbanded soldiers that kept tippling houses.

Is that the only idea of the assembly, that you ever knew suggested to the

Canadians, and to which they returned their answer?—I put the question to several of the Canadians. They told me assemblies had drawn upon the other colonies so much distress, had occasioned such riots and confusion, that they wished never to have one of any kind whatever.

Did not the Canadians likewise think, that assemblies would draw upon them expences as well as distress?—By distress I meant the displeasure of this country. No, they never stated that.

Have you never heard, that they imagined they should be obliged to pay the expence of government as soon as they had assemblies, but that until they had them they were not to pay the expence?—No, that was not the idea of the Canadians; they dislike it as not being conformable to their ancient customs.

Do you mean indiscriminately the whole law, civil and criminal?—The civil law.

Do you think, if all their customs of descent and heritage were preserved, that they would be dissatisfied with the introduction of trial by jury?—With regard to any portion of their law, one custom separate from another, I believe they would be extremely hurt to have any part of their customs taken from them, except where the commercial interest of the country may require a reasonable preference, and such commercial laws as can be especially mentioned to them. I believe they would make no objection to any such commercial laws, if they may know what those laws are. But laws in the bulk, which nobody can explain to them, they think would be delivering them over a prey to every body that goes there as an attorney or lawyer.

Was the dissatisfaction expressed by the Canadians at large, or by the corps of noblesse?—They were pretty unanimous in most points; as unanimous as so large a body could be expected to be.

Are the noblesse better pleased with a jury in criminal causes?—I never heard objections made to the criminal law, except in one instance. Very soon after I went into the province, there were some Canadian gentlemen and some English gentlemen arrested for a very great crime indeed.[1] They were accused of a very great crime indeed. They were committed to gaol until the next trial. It was the unanimous sense of the province that they were innocent, and they were found innocent at their trial. Upon that occasion, I heard several of the Canadian noblesse complain of the English law; but, upon my word, I recollect no complaint of the criminal law but upon that occasion.

What was the nature of the complaint?—They complained that upon the deposition of one man of very bad fame, gentlemen should be committed to prison, and there remain a considerable time before they could come upon their trial. They said, that under the former law, more than one information would have been taken, and an inquiry made by the King's attorney-general, and that those gentlemen would not have been arrested if such information had been taken, as their innocence by that means would have appeared.

Has there been any other trial by jury for a capital offence?—I do not remember to have heard of any.

Have there been any considerable number of trials for offences among the common people?—Very few, to my knowledge.

What number of these noblesse is there in this country?—My memory will not suffer me to tell.

Nearly?—I suppose a hundred and fifty; I speak at random.

What is the occupation of them; do any of them trade?—I believe very few; they are not fond of trade. They have been brought up in the troops; they do not apparently trade; perhaps they may have connexions with some that do.

Do you know from the Canadians themselves, what sort of administration of justice prevailed under the French government, whether pure or corrupt?—Very pure in general; I never heard complaints of the administration of justice under the French government.

Was it so pure, that there was no room for favour from the judge?—The intendant of the province was chief in matters of justice.

What was his general character?—With regard to his character as chief justice, I believe it was unexceptionable. It can never be the interest of a sensible man to connive at, or suffer, iniquity in courts of justice. The matters in dispute are very small between neighbour and neighbour, and he would only incense the

[1] The Walker Case. See Burt, A. L., 'The Mystery of Walker's Ear' (*Canadian Historical Review*, iii, pp. 233 ff.).

people for very little purpose. The French intendant had other methods of making large sums of money, and enriching his favourites, if he had a mind to do it.

Was the administration of justice, in the other branch, equally pure?—He was at the head of all justice. He had his delegates, who presided in small matters in the other parts of the province. There was an appeal from the others to the intendant.

Were the decisions of the court in the three districts always just?—I believe so; I never heard any complaints from the people, that the courts of justice were not properly administered. I have heard of great fortunes made in another manner.

If their favourite laws and favourite customs were preserved to them, would they not, in every other case, take the law of England?—They do not know what the law of England is; they call the law of England the mode of administering justice. They do not know the difference between Canadian law and English, in the mode of administering it. The essential laws of England, in deciding matters of property, they have not the least idea of. The intelligent part of the Canadians think and hope, that their laws and customs may be continued, because they know what they are.

Have the intelligent part of the Canadians any idea of the law of habeas corpus?—I believe not the least. I do not say there are no gentlemen who have made it their particular study.

Are there any number of the professors of the law, capable of instructing them in the law there?—There is a Mr. Taylor, attorney-general; there is a Mr.———, secretary. I would not venture to say there is one lawyer in the whole province who has been at the bar in England; I may be mistaken. I do not know one that ever was at the bar as a lawyer.

Then I understand you do not imagine that any other person but those two are barristers?—Not to my knowledge.

In general, have not the British subjects in Canada and the old subjects intercourse with one another?—They have very little society.

Do the Canadians in general communicate their sentiments to the British subjects at all, or to the officers, etc.?—They are very decent people, and communicate their sentiments only to those whom the King has appointed to receive them.

Has there been, by the supreme council established, any summary trial for small matters in the different parts of the province?—Yes; the justices of the peace formerly had authority to try small causes.

Were any of the Canadian gentlemen among those justices?—Not one.

Did there exist in the French government any summary mode of proceeding in the country?—Yes; some of the seigneurs had a right to hold courts of justice. They almost all had a right; but few exercised that right.

Has that been taken away under the English government, or more exercised?—Entirely taken away; besides that right, which the seigneur of the original tenure has, there was what is called the right of proceeding as delegates to different parts of the province.

Are those delegates resident inhabitants, who have a commission something like justices of the peace in England?—They were creditable people of good understanding. There was scarcely such a thing as a lawyer admitted into the colony, under the French government, except the King's lawyers; I mean regularly educated lawyers. There were attorneys and notaries.

Do you conceive the people of the country to be at all informed of the French law they lived under?—They understand the French law from education, as the people of England understand the English law from education, from the customs and usages of the place.

Do they understand more than the general custom of descent and heritage, and the mode of conveying property in that country?—They understand in all respects whatever comes before them. All the French law was not introduced into Canada. They are acquainted with the laws of property generally, and the custom of Canada; but as to the other laws of Paris, they are not introduced: they are as much unknown to them as the law of England.

Is there any code of Canadian law published?—There are law books, and some that contain precisely the laws and customs of Paris, from whence the Canadian laws are derived. There are, besides these, a collection of the customs of Canada, as far as they are able to procure them, which I understand is published.

Has there been any plan proposed since you have been governor, or any in your predecessor's time, to determine causes of small value?—I do not know that there is any plan. They have no sort of intermeddling with the administration of justice, but in juries.

Would not that have removed their objection to the English government, and given general satisfaction in the country?—The administration of justice by the seigneurs was rather a tax upon them; there were very few that exercised it. Since I have been there, they have applied to me to know whether they might not exercise it; or to know, whether it was taken from them. I said, I wished they would let the matter lie dormant till something was finally determined.

What is the wish of the people who would be subject to this jurisdiction? Do they wish to be tried without expence, and upon the spot?—They were under some check under the French government. They certainly were not delivered up to their mercy: there was an immediate appeal to the King's courts of justice. They were under the check of the King's courts of justice, and the King's attorney-general brought every thing up immediately.

Might not some alterations have made that very agreeable, such as might have enabled them to bring small suits to immediate issue?—They are very much attached to their ancient customs. They were so much dissatisfied with the people to whom commissions of the peace were granted in different parts of the province, that I was obliged to take away their power. It never was much trusted into the hands of the French.

Were all the judges in all the courts of justice in Canada bred to the law?—No.

Were any more than the chief justice of the King's Bench?—I believe not one.

Were the Canadians made aware by those persons, that a jury in civil actions have nothing to do with the law?—They have a very confused idea of the English law.

What was the nature of those decent compacts and associations they were determined to enter into, to resist the laws of this country?—To bind themselves in all marriage contracts, as strictly as it was in their power to do, that all their possessions should go according to the Canadian customs, and in general to adhere to that as closely and firmly as possible.

Did the supreme legislative council ever make any laws to secure property, according to the Canadian customs?—There were some ordinances made; but I never could learn that anything was clear or certain in the law, nor did I understand clearly what was the law and custom; nor does it seem to be a clear question in the country. I have heard the same man argue for the English law in one cause, because it suited his cause, and I have heard him argue for the French law in another cause. There is an ordinance for quieting the minds of the Canadian subjects, directing the court of common pleas to decide agreeably to the laws and customs of Canada, in adhering as much as possible to the laws of England. There is also an appeal to the supreme court of equity, which is directed by the common laws of England.

Would two-thirds be satisfied to have their suits, relative to debts in the country, decided by the Canadian law?—I believe not.

Have they any regular method of conveying their sense at present?—I understand they have conveyed it in petitions. When I was in the province, seeing great heats and animosities upon every occasion in various sorts of people, and that petitions of all kinds greatly incited these animosities, I dissuaded them, as much as it was in my power, from measures of that sort. Before my arrival they had expressed their desire in a petition to the King. They frequently repeated the substance of that petition, as their earnest desire and wish, and would have drawn up a fresh one, had I not dissuaded them from so doing. My reason was, that I wished them to wait till the King should think proper to reply to their petition. During my residence, upon all occasions, all sorts of people expressed the same wish and desire as in the petition, which I understood to be the petition sent before my arrival. I understand that since I have been in England, they have expressed the same wish and desire by fresh petitions, for fear the former one should be forgot. I assured them that in due time proper attention would be paid to it and justice be done; and that in the mean time, they ought to rest satisfied with the good-will and intention of this country towards them. I saw a letter, or paper, asking two Canadian gentlemen, in case I had not been here, to act for them as their agent, to present this petition.

Are the Canadians aware that an assembly into which they were admitted

would be a legal and decent method of making the sense of the inhabitants known, or have they been led to look upon all representations of assemblies as factions, etc.?—I believe they have no idea of assemblies, but what they receive from the newspapers, and the accounts that come from the other provinces.

Have, or have not, any pains been taken to explain to such persons the excellence of such a constitution, and the advantages that would arise from it, or have they been left to conjecture?—It is a difficult matter to instruct a whole people in lessons of politics, and I have never attempted it.

At the time the apprehensions of the Canadians were signified to the officers of government, had there been no conference among the principal people in Canada? Had there been no conference with the governor, to hit upon the form of government most agreeable to the people?—They had frequently expressed their desire and prayer to have their ancient usages restored to them; and stated that the form of government which came nearest their ancient usages would be most agreeable to them.

Did they state what those usages and customs were, to the persons to whom they applied?—They were in general words, and are expressed in the petition. All conversations upon the subject were to the same effect.

Do you conceive it would be impracticable at this time, without giving general lessons of politics to all the people, to explain the advantages they would derive from the English government, without the abolition of all their usages?—They have very often told me, that during the military government, the English frequently expressed to them the happiness, and great advantages they would receive, by the introduction of the laws of the English government, and by the protection of the civil laws of the country; that they were to become a happy people by the change. Several years after, when they had experienced what it was, and found that they were debarred of what they looked upon as the civil rights of subjects, and that they understood that, as Roman Catholics, they could not enjoy places of profit, or trust, or honour, they thought it was adding mockery and insult to severity; and were astonished that people could hold such language to them.

Was it ever suggested to them, that the difficulty could be got over, and that the Roman Catholics might be admitted to some share in the government?—I have often told them that I believed it would be the case in time.

Did you ever hear of any of the principal Canadians expressing a wish that, until there was an assembly established, the council established by the King should be so modified, as to bear as near a relation as possible to the moderate principles of the constitution of this country?—I often heard them express a wish, that Canadians should be admitted into the council; I never heard anything further.

How was the legislative council composed in the French government? Had Canadians a share?—It was more a council of justice than of state, and more a council to receive appeals than to make laws; they made certain small regulations. The governor was chief of the council: the intendant was president, and he collected the voices. There were a certain number of the Canadian inhabitants that were of the council likewise.

. . . . How long were you governor of Quebec, and resident? Are you not governor now?—I am governor now. I was in the province as governor, or lieutenant-governor, commanding in the province, about four years.

Did you not, during the time of your being governor, endeavour to learn the manners, temper, and genius of the people over whom you presided?—No doubt.

From the knowledge and experience you have of those people, do you think they would choose to have the English law as a rule to govern them both in matters of property and matters of crime; or in either, and which of them?—The Canadians are very anxious to have Canadian law to decide in matters of property. I believe they are pretty indifferent in regard to criminal law.

Is that your judgment, formed from your knowledge and experience of them?—It is.

Do you not imagine that the aversion they have expressed to the English law is because they think it is likely to interrupt the course of descent and inheritance, and to load them with incapacities as Roman Catholics?—The partiality and attachment which they have to the laws and customs they possess is well known; and they apprehend that laws unknown to them may introduce something terrible to them; they know not what.

Is there not a great difference between the criminal laws of the two countries?—The criminal law they have experienced is, in fact, not so extremely different. The mode of prosecution, the mode of deciding by the law, is very different; but the trial of great crimes, in nearly all civilized countries, is almost entirely the same.

Are there not more punishments in the law of England than in the law of Canada?—I believe there are: I cannot pronounce.

Was their dislike to the English law uniform from the beginning?—From the time they first experienced it, they very soon found a great difference in the expense, which was very grievous and oppressive to them; not from any defect in the characters of the gentlemen; but the wealth of the country, compared to this, is extremely small. Fees of all sorts, though not unreasonable in this country, were considered extremely heavy in that.

Did they not complain, that the proceedings were held in a language they did not understand; and that no Canadian advocates were permitted to plead in the courts?—That was a great complaint indeed, till it was remedied.

When that was remedied, did they then express as great dislike as they did before?—The expense continued pretty much the same; the satisfaction was greater, having then lawyers that could plead in the language they knew. I believe there has been very little of that in the supreme court.

Have you seen an act passed in the other House relative to Canada?—I have.

Do you think that bill gives the freest form of government to Canada it is susceptible of?—I should think it the best form advisable to give in the present state of the colony.

During the time the English law was executed, had they any such thing as regular gaol deliveries?—I understand the chief justice is to attend. It is a question much more applicable to him.

Were not people apprehended by the power of the intendant and attorney-general, and detained without any kind of assistance from any other place?—I never heard any complaint of the kind.

Do you not know there was some officer that had that power?—I do not know he had the power, but he may have acted from his own caprice or fancy.

Where was that power vested?—The power was in the intendant, likewise in the attorney-general.

Was any person ever prosecuted?—I really do not know that any one was.

Did the mode of trial upon court-martials for military offences during the French government, give any offence?—No.

Were they not tried by some council of officers of the corps?—I should imagine they were tried by the corps of military men.

Had they any objection to that mode of trial?—I never heard they had.

Were the noblesse not very fond of military rank and distinction before the conquest?—They were almost all military men, and of course fond of rank and distinction.

Do they enjoy such gratifications now?—I do not know that any of the Canadians in Canada enjoy any gratifications from the court of France.

Do they enjoy any under English government?—None.

Would it not be flattering to them to enjoy some rank?—Undoubtedly.

Would it be more pleasing to have a share in the government?—Undoubtedly.

If his Majesty did not choose to appoint any particular persons in the place to a share of government, would they not be glad of having other lawful and honourable means of providing for themselves?—No doubt.

Do not the gentlemen of Canada form some opinion relative to the welfare and prosperity of their own country? Is not that a matter of discussion among them?—It has been a matter agitated very much; but they seem to confine their ideas chiefly to the restoration of their laws and customs, and wish that all distinction should be taken away which separates them from the English subjects. By that I understand the admission into places and offices of trust and honour, equally with the English.

Would they be glad to be in such a situation as to make this idea of theirs prevalent?—No doubt.

Have they such objections to the form of an assembly, as to wish to make their ideas prevalent in such assembly?—They do not wish for assemblies; but if assemblies must be, no doubt they would wish them to be a free representation of the people. If that should be the case, they would compose a great part of that assembly.

Would they have an objection to a seat in such an assembly, in which they might have an opportunity of delivering their opinions?—They have never had an assembly, or anything like an assembly, nor have they the least desire to have one; but if there should be one they wish to have a share in it.

Have they any particular objection to arbitration?—Very far from an objection to it. In a great measure they have come into it, wishing to keep clear of the courts of justice.

Could they, therefore, have any objection to have causes decided by gentlemen of the country?—They would wish very much to have their causes decided by gentlemen bred up in the country; acquainted with their laws, usages, and language. They would give the preference to judges; but I do not know whether they would make any violent opposition to juries, if this country should think them advantageous. They confined their petition mostly to general points. I do not know how far they would make juries an essential point. . . .

### Examination of Francis Masères, Esq., Late Attorney-General of Quebec

Mr. Masères was then called in, and acquainted the committee, that he went to Canada in 1766, and resided there three years. He was then asked,

What were the sentiments of the Canadian inhabitants, upon the supposition that the laws of England would be of no more authority among them, by reason of the proclamation?—A great many were very uneasy upon the apprehension of a sudden change of the laws respecting family descent; such as dower, and the like.

What sentiments do they entertain of the form of judicature?—I heard great complaints against the administration of justice. I endeavoured to sift them to the bottom. I think the result was the expense principally; partly the delay according to the mode of English administration. The expense did not consist principally in the fees of attorneys, but the provost-marshal's fees, which were thought intolerable. At the same time, I doubt much whether the provost-marshal did exact unreasonable fees; because, the two that acted there have assured me, they did not make fifty pounds a-year of their place. Whether they said true, I cannot tell. I have heard of the extravagance of the fees, and also of the great burthens of attorneys and advocates; but those fees are not now greater, but rather less.

Do you think the people have a strong attachment to our laws and customs?—I believe that the great body of the Canadians, with the exception, perhaps of an hundredth part of the whole, would be very well satisfied with the establishment of those laws.

Were the people of Canada very apprehensive on account of the supposed danger to religion?—I never heard them express much apprehension with respect to any danger to their religion; but they have at times expressed dissatisfaction at the disqualification and civil inconvenience attending the exercise of their religion; not any that the performance of mass would ever be impeded.

What do you understand to be the sentiments of the Canadians with regard to the form of government they would wish to live under?—I have not heard many of the Canadians enter fully into the subject. I believe their opinion is that of our poet,

"Whate'er is best administer'd is best."

They have no predilection at present in favour of a legislative council, or in favour of an assembly: I speak of the generality of the people. There are a few persons who have thought more upon the subject than the rest: I believe they would incline to an assembly.

What sort of an assembly do you suppose they would like: an assembly of which they might have a part, or one which consists of his Majesty's own subjects?—I have heard some of them say, they would rather have an assembly consisting equally of Protestants and Catholics, or at least of such Catholics as would take the oath of abjuration of the pope's power, but not the declaration against transubstantiation,—than be governed by the legislative council. I have heard so; but in general those who express a wish for an assembly, wish for one without the exclusion of any Catholics on account of the oath:—I mean the oath as it now stands: I mean that which is commonly called the oath of supremacy. I do not know any instance of a Canadian taking that oath; but they have been

under no temptation to do it. Hitherto they have had no assembly. As to being part of the council, it would have been necessary to take the declaration against transubstantiation, as well as the oath of supremacy: therefore the distinction has not been tendered to them.

Do you think the Canadians are desirous of serving upon juries in civil causes?—I believe they would like to have the option of doing so continued to them. The ordinance that directed that court, directed the jury to be optional; and I know that many of the people do actually choose to have a jury, when their causes come to be decided there; which I look upon to be more conclusive than any testimony of opinions may be.

Would they perform the office of jurymen?—They sometimes complained of that as a burthen.

Were not the forms of proceeding according to the French law, in matters of contract and recovery of debts, exceedingly different from those which prevail under our law?—I believe they were. The mode of execution is different. They had not the law of imprisonment in execution for a common debt: but it was introduced by the special description, by that original ordinance that set out the courts of justice. Since that time they have made very frequent use of it: full as much as the British subjects, or more so.

Do they in civil causes look upon the difference as a hardship?—I do not know that they do. I recollect a circumstance in the execution of a process in civil causes, in which the Canadians did complain of the English law, until it was corrected: that was, there was too great haste made in selling their landed property in a hurrying secret manner, and at a small price, for less than it was worth, in order to pay their debts. That has been corrected by an ordinance of March, 1770; and care has been taken to correct the process of imprisonment, which made them liable to imprisonment for debt even for the sum of twelvepence currency, in that part ninepence currency, by substituting the sum of forty shillings. The ordinance provides that an estate shall not be sold but after a proper time, and not at all for a debt less than twelve pounds.

Would not the Canadians think themselves happy without the restoration of their laws and customs, and if none of their forms of government were retained?—I think they would not be happy without the restoration of some of their family customs, as tenures of land, the mode of conveying, marriages, descent, and dower, and the rule in cases of persons dying intestate.

Do not the Canadians at present esteem it a burthen to be drawn from their homes to serve upon juries?—I have heard complaints of the kind.

Are you not of opinion that, in order to make a trial by jury more beneficial it would be right for a certain allowance to be made to persons called to serve on juries?—I think it would. A small one would be sufficient: five shillings a man would make them wish to be called upon juries. I think that allowance should be paid by the party that requested the jury.

In any and in what degree might it be expedient to establish the civil jurisdiction of England, in preference to that of the French, for trials of civil property?—I received an answer from an able Canadian, M. Cugnet, to whom I have no reason to be partial, as he has written very spiritedly against my plan, —that the conquest was in itself a misfortune; and that they must bear with a great deal, he was sensible, in consequence of it; that the criminal law must be that of the conqueror, that is, *le loi du prince*; but that they must submit to it. He has further said, as to civil matters, that in point of justice, his Majesty ought to keep up all the ancient and civil laws of the Canadians; but even there he admits, that the form of administering justice must in the great courts be changed.

Would it be convenient, and for the interest of them as well as of us, that the trial by jury should be established?—I think so; more especially if optional, as it takes away all pretence of hardship.

Is not the province of Canada, by the superior spirit and great capitals of the English merchants, very much improved?—Very much.

Have not those merchants, who have so improved the province, engaged in those concerns and embarked their property there under the sanction of the English government?—Undoubtedly.

Do you think the property so embarked would be equally secure, if the common law of England with respect to civil trials was entirely abolished?—I rather think not equally secure. Certainly, they would not think it equally secure.

What proportion of the trade of the province is in the hands of the English

merchants?—I can only tell from information I have received here in England: I am told it is seven-eights. The increase of the trade is an undoubted certainty. I am inclined to think it is entirely owing to the industry of the English merchants.

Did not the intendant make regulations?— I have seen the commission of the intendant. I think there is a power given him singly, in certain cases, to make some regulations—not of the highest magnitude, but under some limitations, I cannot very well tell what.

Did not the intendant regulate the price of the corn of the country, when it exceeded the consumption of every family; fixing his own price upon a certain quantity?—I do not remember hearing that circumstance from any Canadian.

Do you think the English merchant would continue to embark his property in that country, if he had not the sanction of English law?—I believe it would be a great discouragement to him.

Would the Canadians admit a part of the English law, rather than lose those benefits they find from the introduction of English merchants among them?—I am persuaded they would. I apprehend, if the option was that the English merchants should cease to trade there, or that they should submit to have that part of the law, trial by jury, they would undoubtedly choose the latter.

Are not justices of the peace appointed to decide causes?—Upon the first establishment of the civil government, General Murray endeavoured to soften the change of conquest to the conquered people. The method of administering justice was as follows: he first established a supreme court of judicature, called the king's bench, in which the chief justice of the province singly was to preside, and which was directed to determine all matters criminal and civil according to the laws of England, taking himself to be bound to give those directions in consequence of the King's proclamation. He also instituted, by the same ordinance, a court of common pleas, in which he directed the judge to determine all matters according to equity, having regard nevertheless to the laws of England, as far as the circumstances of the province would permit; and he gave an appeal from that court to the court of King's bench, which was directed to follow the laws of England strictly. He also instituted justices of the peace, and gave to each a power to determine civil matters, in a summary way, under five pounds of the currency of that province, about four pounds English.

Was not the tyrannical behaviour of those magistrates, in their department as judges, the cause of complaint among the Canadians?—Some did behave tyrannically, and their conduct gave rise to great complaints; others made use of their power so discreetly as to be a great blessing to the people. Of these, two were Frenchmen, Canadians, old subjects of old France before the conquest, both Protestants.

Were any of those men suspended from their offices?—None. The governor, instead of suspending them, made an ordinance, in March, 1770, whereby he took away the civil jurisdiction of all justices of the peace. It was governor Carleton's ordinance.

From what cause was it taken away?—I do not know. It was a less odious way, perhaps, of disqualifying. It was a little while after I left the province.

I wish to know in general whether, if the English law was established in Canada,—the civil law—a few years' experience would not conciliate the Canadians in general to that form of judicature?—I am persuaded it would: and more especially if methods were taken to remove some of their objections. How far it may be expedient to take such measures the House will judge. One of their objections is to juries, from the necessity of being unanimous, which they sometimes ridicule, by calling it a method of trial by strength of body and power to fast longest. I conceive, therefore, that that trial would be more agreeable to them, if the majority of the jury were permitted to decide the verdict; but as it is, with all its inconveniences, I believe they would choose to have it in the manner it is, because I see they frequently make use of juries in causes of consequence.

If that could be the case, would it not be a means of increasing their affection and attachment to the government of this country?—In my opinion it would.

Would it not more speedily alienate their affection from both the laws and the government of France?—I should think it would have that effect.

If that should be the case, would it not greatly promote the interest of the country and improve it?—I should think it would.

From your knowledge of the French laws, should you wish to see the property of English subjects decided by those laws, in preference to the Canadian?—My opinion is otherwise; but I am not able to balance the merit of the two codes of law: I do not know enough of either of them.

If the French law should be established, do you apprehend there are judges sufficient in number, and of sufficient abilities to administer justice properly to the English subjects?—I doubt it; and besides, while I was there, the Canadians were much better satisfied with the integrity and abilities of the English lawyers in latter times than of their own; so as to employ the English lawyers in the court of common pleas in many causes, in preference to their own Canadian lawyers, who have always been permitted, from the origin of the civil government, to practise in court.

In your judgment, would not the good object proposed by the re-establishing of the French laws and customs, be as well or better answered by retaining a system of English laws, with such alterations as it may be necessary to introduce?—I think that the best method of giving satisfaction.

Are not those parts in which you conceive an alteration to be necessary, in order to gratify the prejudices of the Canadians, principally confined to the tenure of land, the mode of succession, and the descent of property?—Yes; adding to it, conveying their lands, selling, marriages, tenures, etc. I believe I might add, they would be pleased with the continuation of the law relative to intestate effects. It might be easily cured of its defects by the power of making wills: it differs little from ours.

Are you possessed of knowledge enough of the French laws intended to be introduced by this bill to give judgment by them?—I should not like to undertake the task. The difficulty may be measured by M. Cugnet's endeavouring to prove that the French law is a matter of easy attainment. He tells us, in the manuscript I have seen, it may be learned by the perusal of only thirty volumes in folio and quarto.

I beg to know your judgment upon the propriety of re-establishing the Catholic religion in Canada, and restoring to the clergy their ancient rights and dues, without a similar establishment for Protestants?—It is a very doubtful thing; and, unaccompanied with restraints upon the bishop's great power, may be of dangerous consequence. It is certainly not necessary to the satisfaction of the Canadians; because the option of paying tithe, or letting it alone, can never be disagreeable to them.

Do you understand that the Canadian subjects have at this time this option?—They certainly have, and sometimes make use of it. They never presume to sue for tithe, either in the court of king's bench or common pleas, knowing there is no possibility of succeeding. The ground of that opinion of theirs and of mine is, the strong words of general Amherst's answer [1] to the demands on the part of the French general, for the continuation of the obligation of the people to pay their tithes and other dues: "Granted, as to the free exercise of their religion; but as to the obligation of paying tithes, that will depend upon the king's pleasure." That has been universally understood, till now, to have been a positive dispensing with the obligation. It has often happened that they have not paid tithe; much oftener that they did, from their regard to their religion.

Do you consider this bill to be a granting and confirming of this tithe?—The words of the bill are declaratory: the word "enacted" is not there. In my opinion, the right does exist at present. How far words declaring that to be law, which till this time is clearly understood not to be law, will operate as enacting words, I do not pretend to say.

Did you ever hear in Canada that the claim to tithe extended to Roman Catholic landholders, and not to Protestant landholders?—Everybody paid tithe indiscriminately. Since that every body has been understood to be exempted from tithes indiscriminately.

Can you help us to a ground of distinction, upon which we might be induced to believe, that the right is a necessary one with regard to Catholic subjects, and not so with regard to Protestant subjects?—I cannot conceive any.

From your experience of the inclinations and expectations of the Canadians during your time, do you conceive their expectations went to the length of imagining they should have this re-establishment of the Catholic religion made effective, relative to what is meant to be given them by this bill?—I believe they

[1] See No. V, Article xxvii.

have been flattered with hopes of that kind, and I have reason to think promises of endeavouring to procure it have been made to them. How far they thought they would be successful, I cannot tell.

Would they have been induced to believe such would be the result if no such promises had been made to them?—I am of opinion with Sir Jeffery Amherst, that so far from it, if the priests had been permitted to remain in the possession of their livings, and their places had been supplied by Protestants, the Canadians would have been satisfied. They would have been satisfied, if that had been pursued from the beginning; but I do not mean to say, that so small a degree of indulgence, with respect to their religion, would be expedient now.

In your judgment, would not a less degree of indulgence than what is given by this bill content them?—I believe the hopes of the upper class of the people have been raised high. The others would be satisfied with less. Of one hundred and fifty, one hundred and forty-eight would be satisfied with little more than the security of their property, and those family laws I mentioned before. Very few that take the lead among them make a complaint against the English government. Of the set of people who call themselves noblesse, amounting to not more than one hundred and fifty out of one hundred and fifty thousand—eight or ten, perhaps twelve, are noblesse according to the French ideas. Of which class there were fifty thousand families in France; I mean of the hereditary noblesse: but there are others, who associate themselves with these, and consider themselves upon the same footing—people who have held civil offices, noblesse for life, disbanded officers who had held commissions in the militia, or among regular troops—these people are most apt to complain. They fear the change of government the most: they even are, in some degree, envious of the success and prosperity of inferior people.

Do you not believe, that the most extravagant of the Canadian noblesse would think themselves perfectly well off, if the two religions were sent into the country *pari passu*?—I believe no interruption to the peace of the country would happen. I believe more persons would be pleased than displeased.

In your judgment, is the legislative council, which is to be appointed, and removeable at the pleasure of the governor, and to consist of twenty-three, a right sort of legislature for the province of Canada, either now, or ever?—I apprehend not now: certainly, not for ever.

Have you the same objection to a legislative council appointed, and to be removed, by the King?—Not nearly so strong as against a legislative council removeable by the governor. There is a wonderful difference; the former would not make the counsellors contemptible in the eyes of the people: they would suppose the counsellors would not be wantonly removed. Whereas, if they were removeable by the governor, they would be considered as the mere tools and creatures of the governor, and no reverence would be paid to their acts and ordinances. How far they might meet with obedience, I will not say.

Would that alteration, substituting the crown in the place of the governor, but leaving the council of twenty-three, form a legislature fit to be given to the province of Canada?—I am inclined to believe that they keep in view an assembly, notwithstanding the ill conduct of certain assemblies in North America. But if it be thought that the Popish religion is so great an objection to the constitution of an assembly, partly because it is dangerous to trust Catholics with much power; if it be thought, on the other hand, unjust to exclude them entirely; I have thought a legislative council for a few years, consisting of a certain definite number of Roman Catholics, with a large quorum consisting of Protestants only, might be a tolerable substitute for an assembly for seven years. My reason for saying Protestants only is, because I conceive, if the Popish religion is not a bar to admission into this council, it ought not to be a bar to admission into the assembly. For that occasion, recourse should be had to an assembly; which would be very agreeable to the Canadians, if Catholics were admitted into it.

Are the provisions introduced by the proclamation such as deserve to be called inapplicable to the state of the province?—I think not, in the general extent. They require correction, and a few alterations. With respect to the laws, I beg leave to state a distinction. The laws that I have mentioned, I can divide into three parts: laws of tenure, laws of conveyancing, laws which I shall call a devolution of property. I conceive the laws of tenure, by which I mean the laws relating to the mutual and reciprocal ties of landlord and tenant, all subsist, notwithstanding the proclamation, and do not need a revocation of it to revive

them. These laws of tenure contain the laws that oblige the tenants to pay their quit rent and corn rent and their mutation fines, to their landlord, to grind their corn at his mill, and give him his meal-toll. If these laws were to be altered, it would be taking away the property of the seigneur; which cannot be done, because it is granted by the capitulation. In the next class, I place the laws of conveyancing, which, though not affecting the very property of the people, because a man may be made to alter the mode of conveying his property, without absolute violation of property, is yet a necessary branch of the law for the convenience of enjoying property. These laws I consider as having been changed precipitately, and that they ought to be restored. In the third class, I place the laws of devolution; meaning by that the laws of inheritance and dower, and the right of the husband upon the death of the wife: the distribution also of the intestate's effects. Those laws may be changed by the legislature, without a breach of the capitulation. . . .

### Examination of William Hey, Esq., Chief Justice of Quebec

How long did you reside at Quebec as chief justuce?—Six years; from the beginning of September, 1766, to 1773.

Have you found the Canadian inhabitants dissatisfied with the introduction of the English law, and exclusion of their own laws and customs? Do they generally approve of the trial by jury in criminal causes?—I think they do.

Are they not equally capable of deciding in civil as in criminal causes?—I do not think the Canadians are in general called upon juries, so often as other inhabitants of Canada.

Do you conceive they are less capable of distinguishing in causes of property, or manslaughter?—It is nicer to determine questions of property, which depend upon cases of law, than criminal causes which depend upon fact. I always found them extremely attentive to my directions; if I may say so.

Were they not willing to receive the like assistance in civil causes?—I think they were, in general, a very attentive and obedient people.

Are not the laws of Canada respecting lands, dower, and gift by will, allowed by the court and juries at Canada, respecting the Canadian subjects only, to be just as they were when they were in the possession of the French?—I believe the court of King's bench did admit the Canadian laws and customs indiscriminately, in general. The ordinance directed them to do it.

Then you believe the Canadians would be content to have the laws continued to them upon this subject?—I believe they would. They have made objections to juries. The higher part of the Canadians object to the institution itself, as humiliating and degrading. They have no idea of submitting their conduct to a set of men, their inferiors; and the lower order look upon it (as in truth it is) a burthen to them.

I apprehend the customs of Canada are as much considered by the juries of Canada, as the particular customs are here by the judge and jury?—I believe, in the court of King's bench, they are. I have thought myself obliged, in my capacity of chief justice, in every case of appeal, to determine by the same rule; because it seemed to me a gross absurdity, that I should sit to determine the merits of a cause, governed by one kind of law, which they had determined under the provisions of another.

Is there any method so likely to reconcile the Candians, in general, to our government, as the introduction of the English laws, by the intervention of a jury?—There are two questions, rather. I believe they have great objections to the introduction of English laws. With regard to trial by jury, they certainly do not understand the benefits resulting from it as we do; but I do apprehend, under certain modifications, it would not be disagreeable to them, both in civil and criminal causes. I think the trial by jury would not be disagreeable to them, if they were allowed compensation for their time and trouble; and I think, further, if that unanimity which our law insists upon, was not to be insisted upon there, and that the jury were to be composed of an unequal number (suppose thirteen or fifteen) and that the majority of two-thirds were to determine the question, I do not, in my own mind, think there would be much objection in the main body of the Canadians.

Do you mean this regulation to be in criminal as well as civil causes?—No. All in criminal causes.

Have you ever understood that the French suitors had ever been accustomed to make presents?—I have never heard of any instance. I have found a great alacrity among the Canadians to canvass for the vote of a judge. That is still remaining in the province.

Have you heard any general complaint of juries deciding partially in causes of property, or by any improper influence?—I cannot recollect any particular instance. Suitors have complained. I never heard any general complaint with regard to decisions. I have heard some with regard to their conduct in not deciding matters.

Why did they hesitate?—Perhaps it might be from difficulties arising from the question itself; perhaps it might be prejudice as to the party, as between one another; but they certainly have departed without giving verdicts; and, I am ashamed to say, I did not punish them for it.

Then the Canadians do not think, under the proclamation, this country is under an indispensible necessity to allow them juries?— I cannot take upon me to say. They have an option. They have not frequently used the option. According to the best of my information, it never has been in the court.

Would not the English be very much dissatisfied if juries were not to determine?—Very much so. They are wonderfully zealous for the trial by jury; and, the misfortune is, they do not act up to it; for I can never get them to attend. They are not numerous. It certainly comes upon them at a very inconvenient time. They have, some part of the year, nothing to do; the rest of the year they are exceedingly busy.

Under the present bill, do you think you could administer justice equally to your own satisfaction, or to the Canadians in general, as you have done hitherto?—The question is rather embarrassing for me to answer. I hope I may answer for the integrity of my own conduct.

Could you make yourself equally master of the Canadian law as of the English law?—That must require a great deal of time and attention; and, I am afraid, more abilities than I am master of. If his Majesty thinks proper to continue me, I shall certainly try to make myself master of it. I am unequal to give any opinion upon this bill. It is not my province, before this House. I profess myself perfectly indifferent to the bill, and very unable to form an opinion.

If the benefits of the *habeas Corpus* were explained to the Canadians, would they not think themselves highly favoured by it?—I should think it impossible but they must think themselves highly favoured by it; but I do not pretend to answer for the opinions of the Canadians. They are, in general, a very ignorant people—a very prejudiced people.

Are they not capable of understanding the benefits of juries, as well as those of the *habeas Corpus*?—I cannot answer for their capacity. They are, at present, in a state of great ignorance with respect to it.

If the *habeas Corpus* is not allowed, is not arbitrary imprisonment in the power of the governor, without legal relief?—I should apprehend there are abundance of restraints upon the governor, which will intimidate him; and that the courts of justice would relieve against such. It would not be so instantaneous, perhaps, as the case might require.

What is the mode of relief that the courts would take, if it came to their knowledge, under the establishment of this bill?—They would not give instant relief: but I apprehend the party would be delivered at the commission of oyer and gaol delivery. If out of term time, not.

Suppose the imprisonment private, what remedy then?—No remedy.

Without the permission of juries, may not money be levied upon any of the King's subjects, under this bill?—I have had but one view of the bill. I did not know of my attendance here. It does not occur to me, the power of raising money —it is so directly in the face of every law. I apprehend it might not be done readily. The application must depend upon the decision of the court; consequently, upon a jury.

If the Papists were relieved from the oath of transubstantiation, would they not take the other?—The clergy would not. Perhaps some of the other inhabitants would. The clergy might admit the King's supremacy with regard to temporals. I speak only my own opinion. There is no such thing as public chapels. Debts have been sued for goods supplied to the Canadians.

Have the Canadians thought the decision fair?—I never heard any particular objection to them. I believe the import and export have increased.

What proportion is carried on by the English subjects residing there?—The English subjects import more than the Canadians; but when imported, the Canadians take it up from them to the country.

Have the profits of the possessions of the Canadians been increased since the conquest?—They certainly grow more corn, are more populous, and likewise cultivate their land better. If this land had been now sold, no doubt it would have sold for more. The body of the people are not at all dissatisfied with the conquest. To be sure the higher part are.

Have juries been considered as judges of law as well as fact?—They have taken it upon themselves to judge of law as well as fact. They have laid it down as a certain principle, that they will never give a special verdict upon any occasion.

Have you not paid attention to the Canadian law?—I certainly have, whenever causes came up to the court of King's bench. Very few causes ever originated in my own court.

Do you understand that, by this bill, all the law in civil causes is to be repealed, and the law of Canada take place entirely?—I understand it so.

What remedy is substituted in the place of the *habeas Corpus*?—I know of none. There is no long oppression; they sit every week.

Under the present constitution of the English criminal law and the French civil law, could a person, not imprisoned for a crime by the operations of law, have relief by the gaol delivery under this present bill?—My duty is to inquire into all prisoners, and to know for what they were confined. If I did not find a law for it, I should be tempted to make one myself.

Would the French civil law give any reparation to the party for such confinement?—I should apprehend it would, upon the common principle of justice.

Is there any positive law in the Canadian code, that authorizes that idea, or is it what your humanity would make you infer?—I apprehend, under every system of laws, there must be naturally a redress for an injury of that kind. What the particular mode of it is under the Canadian law, I cannot tell.

Do you mean, that any chief justice, or judge, would be entitled to assess any particular sum of money to compensate?—Undoubtedly, the court must sit and determine the quantity. I cannot speak to it. I never studied the law of Canada as a system. I have endeavoured, in all cases of information, to collect the law. I apprehend the aggrieved party must bring an action; and that, according to the evidence of the debt, the court would allow it him. I believe, where the matter has been doubtful, and has depended upon an intricate account, the court has *ex officio* awarded it to arbitrators to settle it. I mean under the old Canadian system.

Under the Canadian law, do you know of any power of imprisonment for debt?—In particular cases there was a power; but, in general, they did not use the arrest for debt. For debts of a large nature, such as bills of exchange, I believe they did allow it; but, in general, not.

Do you conceive the recovery of the property of the English merchants, though in Canada, would be more or less easy, under this bill, than it was before?—That will depend, in a great measure, upon the establishment of the courts for the administration of justice. If they were well supplied with proper powers—persons of discernment and integrity invested with proper powers—I should apprehend that property might be more easily recovered.

What do you understand, under the present form of the bill, would be the mode of administering justice in that country? Who would stand in the place of the Canadian intendant?—I apprehend that would depend upon the execution of the authority which is given to the Crown, by virtue of that clause, which enables the King to appoint courts of justice.

Do you apprehend the matter of courts of justice to be left at large?—I do. I apprehend my present commission will be at an end.

What kind of a commission can be given under the Canadian law?—I see no necessity for altering the commissions.

Will the establishment absolutely and unlimitedly of Canadian civil law, tend to encourage or discourage British subjects from purchasing land in that country?—I believe the British subjects would have no objection to the restitution of a part of the Canadian laws; but I think the restitution of the whole would very much disincline them to settle among the Canadians.

Do you think it would be impracticable, or even very difficult to draw such a line of admission of Canadian laws, as would give satisfaction both to the new

and old subjects?—I myself have been unfortunate enough to differ with General Carleton in that respect. His Majesty was pleased to order the governor, the attorney-general, and myself, to make our report upon the state of the province, and particularly with regard to grievances which the Canadians either felt, or thought they felt, under the administration of justice, as it was then administered; together with the remedies that we thought most proper to be applied to those grievances. The Canadians conceived that the introduction of the English laws, and the exclusion of their own, at least their doubt and uncertainty how far that matter went, was their greatest grievance; and the remedy proposed to be applied was the restoration of their own laws and customs *in toto*. I own, myself, I thought that went too far. I thought that such a mixture might be made, as would be agreeable both to the Canadians and British subjects, at least the reasonable part of both, and answer every purpose of state policy here at home. My idea was, that a country conquered from France, and retained by the treaty at the end of the war was, if possible, to be made a British province. I was, and still am, very sensible, that must be a work of time and difficulty; but, however, I thought it an object worth attending to. The first thing that suggested itself to me under that idea was, that the laws of this country should be considered as the leading system of judicature in a province that was to become British. I was willing, however, to allow large exceptions in favour of the prejudices, the very natural and reasonable prejudices, of the Canadians. I was willing to allow them the whole law with respect to their tenures, with respect to the alienation, descent, and mode of conveying or incumbering their real property, to the rights of dower and marriage, and the disposition of their personal estate in case of intestacy. This I thought was a very large field for them: quieting and securing their possessions according to their own notions of property, and not breaking in upon or disturbing their former settlements. The rest of the law, as the law respecting contracts, debts, disputes of a commercial nature, the law of evidence, and many other matters of that kind, I thought might safely stand upon English bottom. These, with the whole criminal law of England, with the trial by jury, the presentments by the grand inquest, together with the establishment or at least, toleration of their religion, with some reformation in the proceedings of the courts of justice, to exclude our modes of pleading, which the legal pleaders of the province are very unequal to, and to introduce a more compendious and simple method of process, more conformable to what they had been used to under their own government, would, I had hoped, have made up a system that should not reasonably have been objected to by either British or Canadians. I am of opinion, that at the time I stated that as the ground of my difference from General Carleton's report it would have been satisfactory to the Canadians. I am in doubt now whether it will; but I still think it ought.

Why do you think it would not now be satisfactory to the Canadians?—I apprehend they have risen in their demands of late, and hope to be gratified to the utmost extent of their desires.

Upon what are these very extensive opinions founded?—I know of no particular ground for the extent of them. It appears to be a natural progressive state from the condition they were in, to that in which they now stand. They were terrified, and in a state almost of distraction. They neither expected to retain their religion or their laws, and looked upon themselves as a ruined and abandoned people; but when they saw attention wisely and humanely paid to their situation, they were willing to improve their condition, as far as their ideas carried them, to the absolute restitution of their whole laws and customs. But I know of no particular encouragement given them to ask anything. It was, I have no doubt, promised them, that their case should be fully and fairly represented, and that they might rely upon his Majesty's bounty and goodness for their relief.

Do you suppose they included in that general wish for the restitution of their laws and customs, a wish for the restitution of the French criminal law?—I do not apprehend they did. They seem perfectly satisfied with the English criminal law. I cannot conceive them so stupid as to wish for the French law. I speak of the great body of the people. There may be a few persons of a very peculiar nature, that may wish for it.

Do not those persons you so properly describe as looking upon their situation with respect to their property and with regard to juries, desire the restitution of their criminal laws?—I have no doubt they do. These are the noblesse.

Does not the objection of the higher people to the trial by jury, in civil causes, in a great measure arise from their being deprived of that influence they used to have from their power over the judges?—I cannot say it does. I never heard any complaints of their exercising any undue influence over the judges.

Do you conceive that their readiness to have back the French laws did not arise from the expectation of success? Have you not heard that the more powerful were the most successful than the lower people?—I never have heard any thing particular one way or the other; but one would be apt to imagine that such an influence might prevail. I am inclined to think, in general, that their courts of justice were pure, and justice fairly administered. There was a great control of the superior council over every judge's determination. As that council was composed of men of the first rank and character in the province, I cannot suppose they were under any undue influence, or that they would suffer any.

Would not the lower and middle Canadians be flattered and pleased by the power given by a jury, in proportion as the higher were mortified?—I am inclined to think not. They would *endure it*, that is all: and, under the alterations I have mentioned before, it would be less disagreeable to them; but I fear it would take a long time to convince them of the use or advantage of it.

Was an appeal to the superior council attended with no difficulty or expense?—No difficulty, and very little expense.

Where will the right of hearing appeals be lodged under this law?—I apprehend that will depend upon the constitution of the courts; as they will, and must be new modelled under that law.

Do you think the former law of appeals will be inapplicable to the government of that country under its new law, without a special provision being made?—There will be no court to appeal to. The present courts will be abolished; the present judges will be abolished. The authority that constitutes these courts may, I presume, constitute the mode of proceeding in them, and how and where to appeal from them. But this act only directs, in my apprehension, that the rules of law to be observed in these courts should be those of Canada, with regard to civil property.

Can you suggest any body sufficiently qualified in the laws of Canada to receive the appeal and do justice upon that appeal?—I have no particular person in my eye to mention.

Do you understand the appeal would be according to the spirit of the French law?—The ultimate appeal would always rest upon the King and council; but the stages it would go through must depend upon the constitution of the courts.

Do you conceive there would be no inconvenience arise to persons from having their property tried upon an appeal under such laws?—I cannot give an opinion upon the competency of the privy council.

Not with regard to the abilities of the privy council. But do you conceive that the education of a man for a privy councillor in this country will enable him to judge of the extent of these Canadian laws? Is the Canadian system of laws a short system, or is it contained in many books?—It is much less complicated than the English, and contained in a much less number of books. The text of the Canadian law is contained in a very few articles; but the commentaries may be very voluminous.

Are there not many parts of the Canadian law immaterial to this point, but which might be attended with considerable inconvenience to the English subjects residing there?—I must confess I am not able to answer that question. The Canadian laws were extracted—those that were thought necessary and applicable to every purpose of securing their property—by a set of gentlemen in Canada; who, I believe, were very unequal to the work. The compilation is published, and has been printed: it is generally thought to be a faithful one.

In adopting that compilation, and establishing trial by jury in civil causes, might not such trial be obtained without any burthensome expense to the inhabitants?—I do apprehend it might, if the courts of justice would regulate the fees.

Would it not be difficult in some cases, for the courts to regulate the expenses?—I should think not, in material matters; but in the fees of counsel, for example, no court can, or perhaps ought, to interfere.

Do you conceive that, at present, the Canadians are much attached to France, and would wish to be under that government again?—I do not apprehend that

the body of them would. No doubt the noblesse and the military have been great sufferers, from the loss of their employments and commissions; and it is natural enough to suppose that they would incline to their old employments, under their own government. But I should hope that they, if proper indulgence were paid to them, might be made to withdraw from every idea of returning to their old government, and become good British subjects.

Do you conceive the Canadians would have any great objection to a provincial assembly, into which Roman Catholics would be admitted, under certain restrictions, such as taking the oaths?—I believe they have no idea of advantage from it. They look upon the house of assembly as a house of riot, calculated for nothing but to disturb the government, and obstruct public servants.

Do they understand that there is a resemblance between the house of assembly and the House of Commons in this country?—They do not understand the principles of either.

Have there not been conferences in that country, relative to the form of government, and arrangement of laws, that may best suit them?—I know of no particular conferences in that country relative to a form of government and arrangement of laws.

Has it never been agitated with them, what would make them happy?—I know of no conference among them upon that subject. Their ideas are a perfect submission to the Crown, and to any authority the Crown chooses to erect. They have a high confidence in his Majesty. If he chooses to call a house of assembly, I have no doubt they will compose it; but they would not know what to do when they came there, nor have they any idea of the advantages of such an assembly.

They never, then, have been made to understand by any of the King's servants, that it would be of advantage to them? No pains have been taken to tell them that, by means of an assembly, they would have a power of internal regulation; but they have been taught to put the amplest confidence in the Crown?—They require no instruction; it is their natural habit. I have harangued the juries upon the advantages of the British constitution; but, whether it was my fault in not delivering my ideas upon the subject clearly, or that they were not interpreted to them in the French language, I do not believe any Canadian took notice of what I said. I mean, my ideas with regard to trial by jury and the criminal law of England. I never mentioned any advantage of an assembly.

Have you ever understood that there was an absolute dislike to assemblies among the Canadians, or only a dislike in part?—They do not understand them, and what they do not understand, they cannot be said to dislike.

Were they ever informed that assemblies could be managed so as to be extremely obsequious to government?—They do not at all understand the method of making themselves so. To the English merchants, who are desirous of establishing the English laws, it would, of course, be an encouragement. . . .

*Mr. Edmund Burke.*— . . . . But before I proceed, allow me to state, in a few words, my opinion with regard to the principle of toleration. There is but one healing, Catholic principle of toleration which ought to find favour in this House. It is wanted not only in our colonies, but here. The thirsty earth of our own country is gasping and gaping, and crying out for that healing shower from heaven. The noble lord has told you of the right of those people by the treaty; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me. I look upon the people of Canada as coming, by the dispensation of God, under the British government. I would have us govern it, in the same manner as the all-wise disposition of Providence would govern it. We know He suffers the sun to shine upon the righteous and unrighteous; and we ought to suffer all classes, without distinction, to enjoy equally the right of worshipping God, according to the light He has been pleased to give them. The word "established" has been made use of: it is not only a crime, but something unnatural to establish a religion, the tenets of which you do not believe. Applying it to the ancient inhabitants of Canada, how does the question stand? It stands thus:—you have got a people professing the Roman Catholic religion, and in possession of a maintenance, legally appropriated to its clergy. Will you deprive them of that? Now, that is not a question of "establishment;" The establishment was not made by you; it existed before the treaty; it took nothing from the treaty; no legislature has a right to take it away; no governor has a right to suspend it. This principle

is confirmed by the usage of every civilized nation of Europe. In all our conquered colonies, the established religion was confirmed to them; by which I understand, that religion should receive the protection of the state in those colonies; and I should not consider that it had received such protection, if their clergy were not protected. I do say, that a Protestant clergyman going into that country does not receive the protection of the laws, if he is not allowed to worship God according to his own creed. Is this removing the sacred landmark? What I desire, is, that every one should contribute towards the maintenance of the religion he professes; and if this is proper to be done, why not do it immediately? The religion to be established should be that approved religion which we call the religion of the church of England. With regard to the religion of our own country, there would be propriety in the use of the word "established;" but I maintain, that every one ought to contribute to the support of some religion or other. Does any gentleman mean to say, that the impious profligate, the moment he chooses to avow himself an unbeliever, can appropriate to his own use the tithe he has been accustomed to pay for the support of any religious establishment? Suppose one of those persons should turn Jew—I would give him complete toleration, but I say, let him support the synagogue. I will suppose this case: when a man is sued for his tithe, he will declare that he does not profess the Roman Catholic religion. He then walks directly into that mass-house, or church, for the support of which he has positively refused to engage himself: he says, he does not profess the Popish religion; and suppose he abstracts himself from all religion, he pays no tithe. If this be allowed, you are encouraging him to be an atheist. Therefore, this clause does not provide for the establishment of popery, but it does provide for the establishment of atheism. I have not yet heard a shadow of an answer to this charge; nor the slightest attempt made to remedy this evil. With a view of meeting it, I shall propose a clause, providing that the tithe paid by persons not professing the Roman Catholic religion shall be handed over to the Society for the Propagation of the Gospel. What objection can be made to my proposition I cannot conjecture. Does it trench on the rights of Englishmen? Does it trench on the rights of the ancient inhabitants of Canada? By no means. When the people become divided in their religion, why not follow the generous example set by the treaty of Westphalia; by which the duties of two or three establishments were discharged in the same church on the same day; the Roman Catholic, the Lutheran, and the reformed religion? It sets an example worthy of a Christian church. It is a happy union, that has fixed peace for ever in those provinces. . . .

*Mr. Charles Fox.*—I wish, Sir, to state, in two or three words, what I consider to be the principle of this clause. My objection to the bill consists mainly in my objection to this clause: it begins by stating, that "it is at present inexpedient to call an assembly." Now, that I can contradict this assertion, and say it is expedient to call an assembly, I will not assert; but, from all the information I have obtained in this House, I am inclined to think it is expedient. The principle laid down, in the course of these discussions, has been this, that the government of the colony ought to be assimilated, as much as possible, with that of the mother country. That the establishment of this legislative council is a step towards such assimilation, I hold to be impossible. I am free to say, that the Canadians are my first object; and I maintain, that their happiness and their liberties are the proper objects, and ought to be the leading principle, of this bill; but how these are to be secured to them without an assembly, I cannot see. It is not in nature for men to love laws, by which their rights and liberties are not protected. I must have more substantial evidence before I consent to establish arbitrary power in that country: before I consent to establish such a government upon the principle, that *volenti non fit injuria*, I must be exceedingly well assured of the *volens*. You say, that the measure may be corrected. But, is it likely that this legislative council would go on, from day to day, considering how they could abridge their own power? This, Sir, is what can be expected from no set of men whatever. I never wish to see the liberties of a country dependent on such extraordinary virtue. Hitherto, I have not heard a single argument against the establishment of an assembly. We have heard much of the danger of putting power into the hands of the Canadians; but as the persons of the greatest consequence in the colony are stated to be attached to French law and French customs, are we not, by preferring a legislative council to an assembly, putting power into the hands of those most partial to French government? No one has

urged the circumstance of the people of Canada being Roman Catholics as an objection to an assembly; and I trust I shall never hear such an objection stated; for no one who has ever conversed with Roman Catholics can, I think, believe that there is anything repugnant, in their views, to the principles of political freedom. The principles of political freedom, though not practised in Roman Catholic countries, are as much cherished and revered by the people, as in Protestant countries. If there was danger, I should look for it more from those of high rank, than those of low.

*Lord North.*—In the first place, Sir, I cannot admit, that the evidence taken at our bar has been in opposition to the principle of the bill; on the contrary, I think it confirms the most material part of it. With regard to the particular clause before us, what have the witnesses at the bar said? The governor certainly is evidence against an assembly; the chief justice certainly is evidence against an assembly; Mr. Masères is for an assembly. But, in point of fact, what came out in evidence? That there were in the province at present one hundred and fifty thousand Roman Catholic subjects, and about three hundred and sixty Protestant families, whose numbers we will suppose to be a thousand or twelve hundred persons; but very few of them are possessed of any property at all. The fair inference, therefore, is that the assembly would be composed of Roman Catholics. Now, I ask, is it safe for this country—for we must consider this country—to put the principal power into the hands of an assembly of Roman Catholic new subjects? I agree with the honourable gentleman, that the Roman Catholics may be honest, able, worthy, sensible men, entertaining very correct notions of political liberty; but I must say, there is something in that religion, which makes it not prudent in a Protestant government, to establish an assembly consisting entirely of Roman Catholics. The honourable gentleman is of opinion, that more is to be dreaded from the seigneurs than from those in the lower ranks. Sure I am, that the seigneurs who are the great possessors of the lands, would be the persons who composed the assembly, and some of them will, I hope, be admitted to the legislative council; but then, the governor will choose those on whose fidelity he has the greatest reason to rely. They will be removeable by the King in council, and will not depend wholly upon the Roman Catholic electors, or be removeable at their pleasure. It is not at present expedient to call an assembly. That is what the act says; though it would be convenient that the Canadian laws should be assimilated to those of this country, as far as the laws of Great Britain admit, and that British subjects should have something or other in their constitution preserved for them, which they will probably lose when they cease to be governed entirely by British laws. That it is desirable to give the Canadians a constitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope that they will, in the course of time, enjoy as much of our laws, and as much of our constitution, as may be beneficial for that country and safe for this. But that time is not yet come. . . .

*Lord North.*—In considering, Sir, the various interests involved in this regulation, many different parties present themselves, with whose inclinations and desires the House must naturally be disposed to comply. The first great interest that calls for the consideration of the House is the interest of this country, in point of sovereignty and authority over that; the second interest is, undoubtedly, that of his Majesty's Canadian subjects at large, who are, with the exception of a very small number, professors of the Roman Catholic religion; a third interest is, the one to which the honourable member has directed the attention of the House—that of the English merchants trading to the province, to whose capital and to whose skill much of the increase of commerce which has taken place in that colony is to be attributed. There is also another party, whose interests ought not to be left out of our consideration—I mean the ancient noblesse.

In the first place, Sir, with regard to this clause, which proposes to give optional juries in civil causes, I do not consider that it, in any degree, affects the right of this country over Canada in point of sovereignty. If the Crown is interested—if the power and authority of this country is interested—in any questions concerning a jury, it is in criminal matters; and such a jury the bill has already given to the Canadians. The British parliament, Sir, having duly considered the great protection afforded to the subject by juries, against the claim and authority of the Crown, have universally given them a jury in all criminal causes. Now, with regard to giving them also a jury in civil causes, as far as the King's authority is concerned, I do not conceive that any individual, standing in my

situation, would object to it. In granting a jury in all civil causes, the only point to be considered is, the happiness of the parties concerned. The English merchants trading to Canada have an undoubted claim to the protection of parliament. They are a most respectable body, and much of the flourishing condition of the colony is owing to their exertions. In compliance with their interests and desires, I would go as far as the honourable gentleman, in granting them every thing that can be granted, without producing inconvenience and embarrassment. If, Sir, I understand the evidence which has been given at our bar, it certainly is not the desire of the Canadians to have the trial by jury in civil causes. General Carleton, if I remember his evidence, informed the House that, though the mode of trial by juries had been introduced into the courts, the Canadians, in general, did not desire to be tried by them; and it was his opinion, that to give them their old system of laws would be the only means of making them a happy people. With regard to the other evidence, Mr. Hey, the chief justice of Quebec, was of opinion, that the trial by jury is, at present, not preferred by the people; that the noblesse and the superior class of the Canadians hold it to be humiliating; and that the lower orders consider it, as in truth it is, a burthen. Mr. Hey told us, that he did not think the Canadians, in their present state of ignorance, were fit to be upon a jury; that he had endeavoured to explain to them the benefit of the English laws, particularly in point of trial; but, whether what he said was not properly interpreted to them, or whether his reasons and not his argument had any effect upon them, that no Canadian took notice. He also said, that there had been cases of misbehaviour in juries; not of corruption or partiality, but several cases in which they had refused to decide at all. Mr. Masères, it is true, told us that juries would, he believed, be liked under proper regulations; but that the people did not choose to give their time and attendance for nothing. Mr. Lotbinière, on a question being put to him, whether he did not think the English laws the best for the Canadians in general, answered that he made no doubt our laws were good and wise, and made us a happy people, but that his countrymen preferred their old laws and customs. Now, Sir, this proposition requires that the jury shall be, in all cases, constituted according to the laws of England; and is consequently not such a jury as, from the evidence of the gentlemen you have heard at your bar, is the most proper and suitable for the people of Canada. It goes to submit every question of every sort, relative to property and civil rights; all the questions of feudal right; all the questions of private tenures, and the persons holding under them, to trial by jury; and after what we have heard, I think it would be rather a hasty step to entrust all these things to the decision of an optional jury. The best way will be to leave the whole question in the hands of those to whom the administration of justice in Canada will be confided, and whose duty it will be to adopt, from time to time, such amendments as the actual state and condition of the colony may require.

Upon these considerations, I submit, whether it will be proper to bind down the Crown by the clause now offered, or whether, in this case, the people of Canada may not safely repose in the confidence, that, in the forming of the courts of judicature, the interests of all persons concerned will be taken into consideration, and such a plan settled as, under the peculiar circumstances of the country, will be found most beneficial to the whole of the inhabitants. . . .

*Mr. Dunning.*—Sir, in entering upon the subject, there are three classes of individuals to be considered: the Canadians, who are the old inhabitants; the English settlers in the colony; and the merchants, inhabitants of this country, trading to that colony. The first class are represented as being averse to trial by jury; the two last are stated to be desirous of the establishment of such a tribunal, but their desires, it seems, are not worth attending to. I cannot, by any means, assent to the opinion of the learned gentleman, with regard to the first class, when he supposes that the evidence of the witnesses who have been examined at our bar tends to prove, that, in their judgment at least, trial by jury was not desirable in the opinion of the old inhabitants of Canada, the King's new subjects. If I can hear aright, if I can understand rightly, all those witnesses agreed, and agreed so clearly, and expressed themselves so forcibly, that the most wilful misrepresentation cannot place them upon the other side of this question. Mr. Masères, I am perfectly sure, was systematical in his evidence, in declaring, that the Canadians were ready to receive the trial by jury; that they desire it, and will not be content without it. It was presented to them in an optional form; and it was evident what their wish was, from the use they made of it: they claimed

the benefit of it; they had the benefit of it; they were satisfied with the benefit of it. Mr. Hey, if I did not misunderstand him, said precisely the same thing. They therefore distinguished the line of difference, and stated where they were dissatisfied; in what they wished to have some modification of the law; what part of the old system they wished re-established; and what part of the new system they wished to be rectified. Every ear acquiesced in the voice that stated to them that, with reference to all commercial subjects, all matters of contract, all matters of debt, all matters of civil right, with the exception of those that had relation to matters of religious property, might safely stand upon English bottom. These, with the whole criminal law of England, and particularly the right of *habeas corpus*, made up together a system, with which, in the opinion of Mr. Hey, the old and the new subjects of Canada would, at that time, have been perfectly content. But he went on to say, that he doubted whether such would be the case now; though he still thought it ought to be.

Such, Sir, is the result of the evidence before us: but at the time that I say this, I am ready to admit, that if, after more accurate experience, we are now ripe to say, that a trial by jury is not adapted to the circumstances of the colony, we ought not to enforce it. Has any body made such discovery? Has any body found out, that though applicable in criminal matters, it is not so in those which relate to personal property? Indeed, every sort of right is capable of being stated, and of being discussed and decided upon by a jury. As to submitting questions of revenue to juries, God forbid that that idea should be understood in the full extent of it! But sure I am, that if questions of revenue were not to be decided in this country by juries, no creature could endure to live in it for a single hour. That is the only check—and it is a feeble one—with regard to the claim of the Crown. Juries are not to make the law: they are not judges of the law: more especially are they not judges of such laws. The legislature may make those laws; they are to administer; they are to apply them. If the Crown, or the officers of the Crown, say such a law is imposed, it is not competent to a jury to question the validity of that law. If that be proved to their satsifaction they are bound to find it so; they are bound to carry that law into execution. If they neglect that duty, it is obvious the same power exists to correct the misconduct of juries abroad as well as at home. If they persist in that sort of conduct, the law is not so weak, but that it can apply a proper coercion. I can hardly conceive a jury in a predicament of wilful determination to refuse to do their duty. In every point of view, I have always thought, that of all human institutions for the investigation of truth and the rejection of falsehood and error, they are by far the most competent judges imaginable. They are called upon to perform a duty: they return again into society, when that purpose is answered: they are liable to no temptation: they have the common interest of their fellow-subjects in view: they have every motive to induce them to do right: they have no possible temptation to do wrong.

Is that, Sir, the case with judges? With regard to the clause now proposed to be added to the bill, I think it does not warrant our going into that consideration. Upon that point, I will only beg to ask, who those judges are to whom the explication of this law is meant to be entrusted? After the passing of this bill, the excellent judge who appeared at our bar will be chief justice no longer, unless he should be again called to fill the same situation. The House, I trust, has not forgotten what he said with regard to himself upon that subject. A question having been put to him, whether he could make himself equally master of the Canadian law as of the English law, he answered, that it would require a great deal of time and attention, and he was afraid more abilities than he was master of. I beg the learned gentleman will tell us, whether he knows any one who has more abilities. I do not know where such a man is to be found. I think it will be difficult to meet with a man of that description.

The learned gentleman mistook when he spoke of a person thrusting himself into a place, for the purpose of getting what did not belong to him, and he affected to claim only three hundred and sixty men, as the whole amount of the number of Protestants in the colony; but, on this point, the witness afterwards explained himself to mean three hundred and sixty masters of families, making the number altogether about two thousand: but, whether three hundred and sixty, or two thousand, or twenty thousand, be their number, is no part of the present question. These are men who did not thrust themselves into the place, for the purpose of getting what did not belong to them; these are men invited

thither; these are men tempted thither. They thought they might trust the King's word; they presumed that that word was sacred; they did not foresee the time would come when any man would dare to violate it: it imported nothing of imposition to them. Those men, therefore, going thither upon a ground which they thought would not sink under them, now address themselves to you, and claim the protection of those laws, which are generally understood to secure to them the due performance of all men's engagements. That it is the desire of these inhabitants to have the trial by jury in civil causes introduced into this bill, every witness at your bar has borne testimony. I apprehend that their situation and condition, and the means by which they have been brought into that situation and condition, give them a just claim to the protection of the legislature. And why, Sir, is the third class to which I have alluded supposed to be less entitled in this case to consideration? They are known to you as merchants trading to that part of the world: but how long has it been the case, that merchants trading to that part of the world have not been worthy of attention; especially when they have this additional claim to urge—that the difficulties to which they are exposed sprung from the same origin—the King's proclamation? The same witness has told you, that they have formed connections in that country; that they have become creditors upon the faith of having English laws; upon the faith of having English juries to administer those laws, if they should want them. The merchants are too contemptuously treated, if they are left to suppose, that this measure is not to be judged of at all by their inclination. But, if I were of opinion that it should solely depend upon the inclination of the Canadians, since it is not mentioned that it is desired by the Canadians, but only supposed that they are not averse to it, that they would not oppose it, and though only two classes would desire it, their right to it depending upon such grounds as it does, I should say, there is nothing clearer, than that if the measure is to depend upon the inclination of the inhabitants, this inclination points clearly in its favour. But that is not the point upon which the question rests; for though it would be improper and impolitic to do any thing disagreeable to certain classes of the people, yet if any doubt exists, that doubt ought to be decided by your own judgment. The House ought to decide, whether it be proper to adopt or to reject it.

Sir, I have felt it to be my duty to detain the House thus long, in answer to the arguments which have been urged on the other side. I have not given myself this trouble, from any expectation that what I have said will produce any effect, but that I might reply to the only argument that has been urged, and to state, that what I have heard has not, in any degree, altered my opinion. One advantage, however, will result from this discussion. The fact, that there was a division upon this proposition will get into the Journals of the House, and there stand a perpetual memento, that a small minority were of opinion, that English trial by jury should not be abolished. . . .

*Mr. Edmund Burke.*—I will now pass to the other part of the question—the alleged hatred of the Canadians to serve on juries; their inaptitude to the exercise of the functions. But a jury may be fit for them, though they may not be fit for jurymen. A love of justice must belong to the Canadians, as well as to other people; and I cannot believe that trial by jury is an odious thing to men who are subject to no undue prepossession against it. In a question upon matter of fact, where evidence is taken upon oath, between parties who are flesh of our flesh, bone of our bone, is there any thing calculated so to prejudice mankind, as to make them look upon the question of trial by jury as an odious thing? What is the reason that you cannot repose confidence in the known reason of men, as well in that country as in this? But it is said, the people of Canada are averse to juries! Have they complained of a jury? We have not one single syllable of complaint, which has been taken at first hand. Opinions inferred from conversations may be very easily mistaken. They may have complained, very properly, that they found the laws of the land all shaken; that they found a new rule given them, by which their family settlements were all deranged; that they were deprived of all share in the government. But, Sir, as to the alleged dislike of these people to the trial by jury, what does the gentleman who filled the office of Attorney-General in that country with so much honour to himself tell you? Did he point out this fact? Did he ever give such evidence? He spoke flatly to the contrary. He constantly spoke of it, not as a thing which they disliked, but as one of which they were ignorant. Now, dislike and ignorance

are very different things. In their ignorance they confused the idea of a grand jury with that of a petty jury, and esteemed the law a tyranny. Even Mr. Hey's evidence had only a dubious word or two in it.

Having cleared my way thus far, there remains nothing but the evidence of a general officer. He, to be sure, spoke of the ignorance of the people of Canada: he told us of their having no wish to be tried by juries; that they preferred the mode of trial by a judge, from custom, habit and education; and that they thought it strange that the English residents should prefer to have their lives and properties decided upon by barbers and shoemakers. You see, Sir, how much these people are to be pitied whose authority is thus quoted; how ignorant, how much deceived, were those persons who conversed with this great officer! how little they knew of the nature of that institution which they condemned! Their objection was chiefly an objection of pride. Now, if that was a good reason to urge against the institution there, it is a good reason against it here. But the objections of the Canadians, so far as they are solid and substantial, are easily removeable, without injury to trial by jury. With regard to the objection, that it is humiliating to be tried by a jury, it can only come from those who are desirous of being above the law; who are ambitious of lording it over their brethren. To check that disposition would be one of my reasons for giving a jury; because giving a jury would be giving protection to the majority of the people, against those whose pride and arrogance make them say it is humiliating to submit to a jury. I have no objection to all the authority which weight of family, great name, and fixed property in the country can confer. These are always respectable. But how does the establishment of trial by jury necessarily contradict the feelings of this class? It does not contradict their feelings in this country. All the objections of the Canadians against the measure therefore ought to vanish.

The next objection urged against the establishment of juries is that they would be a burthen to the people. Now, that is an objection of another sort; but what sort of objection is it? The learned gentleman has stated it with truth: he says, that no man is willing to be a juror, because he is a juror for the benefit of the community, not for his own benefit. There is no one but would wish to be excused from discharging the duties of the office. In many cases here, men must be forced to serve. Why not do in Canada, as we do here? But, if a small allowance were made, such a measure, I have no doubt, would reconcile the Canadians:—I would, however, rather try a little longer, and see whether these two objections, that a jury is oppressive to the poor and humiliating to the rich, cannot be thoroughly removed without it.

Another thing I forgot to allude to. We are told, that to require unanimity in a jury shocks the Canadians. The learned gentleman gave a sufficient answer to this objection; but I shall beg leave to add a few words more. He observed, that it was the very substance and character of a jury to be unanimous. Truly, Sir, I know it is the substance and character of a jury to be unanimous by our law; but if I could be suffered, in a great public cause, to give an opinion, I do not think that unanimity is absolutely necessary, but that the majority of a jury might do just as well. I believe it would prove no inconvenience; because, even in this country, the majority of a jury always turns the scale. The inconvenience is this,—the rest, finding they must yield, trifle with their oath; they cannot be quite so strict with their oath as I could wish them. I believe that, by the payment of a very small remuneration for the loss of time, all objections to juries will vanish. One learned gentleman has suggested that compensation might be given to a jury to the amount of three pounds: but let it be left to the judge, jury and counsel to adapt the payment to the nature of the cause. Most blameable will they be, if they establish such compensation as will make the expense eat out the suit.

Having said this, I would remark, with regard to what the learned gentleman has charged against us about forcing laws upon them, that all such accusations vanish into air: they are not applicable to the case. We do not know that they abhor a jury—that they abhor a collective jury, in which they themselves will bear a considerable part. If it be proposed hereafter to give a jury to Canada, what will the answer be? "Dare I give what the parliament of England has refused?" You never will have a jury, if you do not put it into this bill: it is absolutely and clearly impossible. How many years elapsed, before you thought of making any constitution for Canada at all! And now, instead of making them

free subjects of England, you sentence them to French government for ages. I meant only to offer a few words upon the part of the Canadians, and leave them to their misery. They are condemned slaves by the British parliament. You only give them new masters. There is an end of Canada.

Sir, having given up a hundred and fifty thousand of these people, having deprived them of the principles of our constitution, let us turn our attention to the three hundred and sixty English families. It is a small number; but I have heard, that the English are not to be judged of by number but by weight; and that one Englishman can beat two Frenchmen. Let us not value that prejudice. I do not know that one Englishman can beat two Frenchmen; but I know that, in this case, he ought to be more valuable than twenty Frenchmen, if you estimate him as a freeman and the Frenchmen as slaves. What can compensate an Englishman for the loss of his laws? Do you propose to take away liberty from the Englishman, because you will not give it to the French? I would give it to the Englishman, though ten thousand Frenchmen should take it against their will. Two-thirds of the whole trading interest of Canada are going to be deprived of their liberties, and handed over to French law and French judicature. Is that just to Englishmen? Surely, the English merchants want the protection of our law more than the noblesse! They have property always at sea; which, if it is not protected by law, every one may catch who can. No English merchant thinks himself armed to protect his property, if he is not armed with English law. I claim protection for the three hundred and sixty English families, whom I do know, against the prejudices of the noblesse of Canada, whom I do not know. I must put the House in mind of what an honourable gentleman said in the course of this debate—that it was seldom that any improvement was introduced into any country, which did not at first, militate against the prejudices of the people. Was all England pleased with the revolution? No. The wishes of the majority were sacrified to the reason of the better part, and the interest of the whole; and we are now enjoying the benefits of that choice—benefits brought upon the ignorant people, not by force, but with an easy hand. The Canadians are now struggling with their old prejudices in favour of their former laws. A new establishment is proposed to them; which throws them into some disorder, some confusion—"All the interim is like a phantasma and a hideous dream." The honourable gentlemen opposite, taking advantage of this confusion, say—We have got a basis; let us see how much French law we can introduce! With a French basis, there is not one good thing that you can introduce. With an English basis, there is not one bad thing that you can introduce. Take the rule of the law of Canada for the rule of the constitution of your courts, and it will be the rule of all your proceedings: take it for the rule of your judicature, and sooner or later, it will be the rule of your legislature. How often have we had occasion in this House to quote the practice of the courts below! how many lights have we derived from the learned gentlemen pleading there! how many lights have we derived from you, Sir! how many from the judicature of the upper House! Where there is a basis of French judicature, of French law, the legislature will never think of grafting upon it an English constitution.

With regard to state policy, which is the last point I shall touch upon—the preservation of their old prejudices, their old laws, their old customs, by the bill, turns the balance in favour of France. The only difference is, they will have George the Third for Lewis the Sixteenth. In order to make Canada a secure possession of the British government, you have only to bind the people to you, by giving them your laws. Give them English liberty—give them an English constitution—and then, whether they speak French or English, whether they go to mass or attend our own communion, you will render them valuable and useful subjects of Great Britain. If you refuse to do this, the consequence will be most injurious: Canada will become a dangerous instrument in the hands of those who wish to destroy English liberty in every part of our possessions.

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## XXX

## CHATHAM ON THE QUEBEC ACT, 1774

[Trans.: *Chatham Correspondence* iv, pp. 351 ff.]

The Earl of *Chatham* rose, and entered fully upon the subject of the bill. He said it would involve a great country in a thousand difficulties, and in the worst of despotism, and put the whole people under arbitrary power; that it was a most cruel, oppressive, and odious measure, tearing up justice and every good principle by the roots; that by abolishing the trial by jury he supposed the framers of the bill thought that mode of proceeding, together with the Habeas Corpus, mere moonshine, whilst every true Englishman was ready to lay down his life sooner than lose those two bulwarks of his personal security and property. The merely supposing that the Canadians would not be able to feel the good effects of law and freedom, because they had been used to arbitrary power, was an idea as ridiculous as false. He said the bill established a despotic government in that country, to which the royal proclamation of 1763 [1] promised the protection of the English laws. Here the noble lord read part of the proclamation, and then entered fully on the council and power vested in the governors, the whole mode of which, he said, was tyrannical and despotic: he was likwise very particular on the bad consequences that would attend the great extension of that province; that the whole of the bill appeared to him to be destructive of that liberty which ought to be the ground-work of every constitution: ten thousand objections, he was confident, might be made to the bill, but the extinction of the mode of trial above mentioned was a very alarming circumstance, and he would pronounce him a bold man who proposed such a plan.—When his Lordship came to the religious part of the bill, he directed his discourse to the bench of bishops, telling them that as by the bill the Catholic religion was made the established religion of that vast continent, it was impossible they could be silent on the occasion. He called the bill a child of inordinate power, and desired and asked if any of that bench would hold it out for baptism; he touched again upon the unlimited power of the governor, in appointing all the members, who might be made up of Roman Catholics only. He also took notice of an amendment which had been made in the House of Commons, which was a new clause, repealing so much of the act of reformation of the 1st of Elizabeth, as relates to the oath of supremacy, and substituting a common oath of allegiance in its place. This act of Elizabeth, he said, had always been looked upon as one that the legislature had no more right to repeal, than the Great Charter, or the Bill of Rights.—His Lordship stated, with great force, many objections to the clause giving to the French Canadians so advantageous a part of the fisheries of cod on the Labrador coast, to the great prejudice of the English fishermen on the banks of Newfoundland; considering the said fisheries of Labrador as a nursery of French-Canadian seamen, to man, in case of a French war, any squadrons of France in those seas. He exposed the train of fatal mischiefs attending the establishment of popery and arbitrary power in that vast and fertile region now annexed to the government of Quebec, and capable of containing (if fully peopled) not less than thirty millions of souls. He deduced the whole series of laws from the supremacy first re-vindicated under Henry VIII., down to this day, as fundamentals constituting a clear compact that all establishments by law are to be Protestant; which compact ought not to be altered, but by the consent of the collective body of the people. He further maintained, that the dangerous innovations of this bill were at variance with all the safeguards and barriers against the return of popery and of popish influence, so wisely provided against by all the oaths of office and of trust from the constable up to the members of both Houses, and even to the sovereign in his coronation oath. He pathetically expressed his fears that it might shake the affections and confidence of his Majesty's Protestant subjects in England and Ireland; and finally lose the hearts of all his Majesty's American subjects. His Lordship then said, that for these and other reasons he gave his hearty negative to the bill.

[1] See No. VII.

## XXXI

## THE QUEBEC ACT

(14 George III, c. 83.)

An act for making more effectual Provision for the Government of the Province of *Quebec* in *North America*.

Preamble.

Whereas His Majesty, by His Royal Proclamation, bearing Date the Seventh Day of *October*, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in *America*, ceded to His Majesty by the Definitive Treaty of Peace, concluded at *Paris* on the Tenth Day of *February*, One thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of *Canada*, where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were annexed to the Government of *Newfoundland*, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that all the Territories, Islands, and Countries in *North America*, belonging to the Crown of *Great Britain*, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence* from those which fall into the Sea, to a Point in Forty-five Degrees of Northern Latitude on the Eastern Bank of the River *Connecticut*, keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence*; from thence up the Eastern Bank of the said River to the Lake *Ontario*; thence through the Lake *Ontario*, and the River commonly called *Niagara*; and thence along by the Eastern and South-eastern Bank of Lake *Erie*, following the said Bank until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pennsylvania*, in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province until the said Western Boundary strike the *Ohio*: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of *Pennsylvania*, and thence, by a right Line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River *Ohio*; and along the Bank of the said River, Westward, to the Banks of the River *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England*, trading to *Hudson's Bay*; and also all such Territories, Islands, and Countries, which have, since the Tenth of *February*, One thousand seven hundred and sixty-three, been made part of the Government of *Newfoundland*, be, and they are hereby, during His Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of *Quebec*, as created and established by the said Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty-three.

The Territories, Islands, and Countries, in *North America*, belonging to *Great Britain*.

Annexed to the Province of Quebec.

II. Provided always, That nothing herein contained, relative to the Boundary of the Province of *Quebec*, shall in anywise affect the Boundaries of any other Colony.

Not to affect the Boundaries of any other Colony.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any grant, Conveyance, or otherwise

Nor to make void other rights formerly granted.

[1] For discussions of the act consult Coffin, V., *The Province of Quebec and the Early American Revolution* (Wisconsin, 1896); Kennedy, W. P. M., *The Constitution of Canada* (Oxford, 1922); Coupland, R., *The Quebec Act* (Oxford, 1925); Martin, C., *Empire and Commonwealth* (Oxford, 1929).

howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain, and be in Force, and have Effect, as if this Act had never been made.

Former provisions made for the Province to be null and void after *May* 1, 1775.

IV. And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec*, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges, and other Officers thereof be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy-five.

Inhabitants of *Quebec* may profess the *Romish* Religion, subject to the King's Supremacy, as by Act I. Eliz.; and the Clergy enjoy their accustomed Dues.

V. And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects, professing the Religion of the Church of *Rome*, of and in the said Province of *Quebec*, may have, hold, and enjoy, the free Exercise of the Religion of the Church of *Rome*, subject to the King's Supremacy, declared and established by an Act, made in the First Year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should, belong to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provisions may be made by His Majesty for the Support of the Protestant Clergy.

VI. Provided, nevertheless, That it shall be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

No Person professing the *Romish* Religion obliged to take the Oath of I. Eliz; but to take before the Governor, etc., the following Oath.

VII. Provided always, and be it enacted, That no Person, professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person, who by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person, in such Court of Record as His Majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

The Oath.

*I*, A. B., *do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King GEORGE, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against His Person, Crown and Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against Him, or any of Them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the Contrary.*

So Help Me GOD.

Persons refusing the Oath to be subject to the Penalties by Act I. Eliz.

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*.

His Majesty's *Canadian*

VIII. And be it further enacted by the Authority aforesaid, That all His Majesty's *Canadian* Subjects, within the Province of *Quebec*, the religious Orders

and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and others Acts and Instruments had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of *Great Britain*; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances, that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in the Manner hereinafter mentioned.

Subjects (religious Orders excepted) may hold all their possessions, etc.

And in matters of Controversy resort to be had to the laws of *Canada* for the Decision.

IX. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, His Heirs and Successors, to be holden in free and common Soccage.

Not to extend to Lands granted by His Majesty in common Soccage.

X. Provided always, That it shall and may be lawful to and for every Person that is Owner of any Lands, Goods, or Credits, in the said Province, and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Life-time by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her Death, by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the Contrary hereof in any-wise notwithstanding; such Will being executed, either according to the Laws of Canada, or according to the Forms prescribed by the Laws of *England*.

Owners of Goods may alienate the same by Will, etc., if executed according to the Laws of *Canada*.

XI. And whereas the Certainty and Lenity of the Criminal Law of *England*, and the Benefits and Advantages resulting from the use of it, have been sensibly felt by the Inhabitants, from an Experience of more than Nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered, and shall be observed as Law in the Province of *Quebec*, as well in the Description and Quality of the Offence as in the Method of Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law, or mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord One thousand seven hundred and sixty-four; any Thing in this Act to the Contrary thereof in any Respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant Governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the Legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner herein-after directed.

Criminal Law of *England* to be continued in the Province.

XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manual, and with the Advice of the Privy Council to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof, shall have Power and Authority to make Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of His Majesty's Governor, or, in his Absence, of the Lieutenant Governor, or the Commander in Chief for the Time Being.

His Majesty may appoint a Council for the Affairs of the Province.

Which Council may make Ordinances with Consent of the Governor.

The Council are not impowered to lay Taxes, Publick Roads or Buildings excepted.

XIII. Provided always, That nothing in this Act contained shall extend to authorize or impower the said Legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorized by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Œconomy of such Town or District.[1]

Ordinances made to be laid before His Majesty for his Approbation.

XIV. Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made, shall, within Six Months, be transmitted by the Governor, or, in his absence, by the Lieutenant Governor, or Commander in Chief for the Time being, and laid before His Majesty for His Royal Approbation; and if His Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that His Majesty's Order in Council thereupon shall be promulgated at *Quebec*.

Ordinances touching Religion not to be in Force without His Majesty's Approbation.

XV. Provided also, That no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine, or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's Approbation.

When Ordinances are to be passed by a Majority.

XVI. Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the First Day of *January* and the First Day of *May*, unless upon some urgent Occasion, in which Case every Member thereof resident at *Quebec*, or within Fifty Miles thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant Governor, or Commander in Chief for the Time being, to attend the same.

Nothing to hinder His Majesty to constitute Courts of Criminal, Civil and Ecclesiastical Jurisdiction.

XVII. And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder His Majesty, His Heirs and Successors, by His or Their Letters Patent under the Great Seal of *Great Britain*, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of *Quebec*, and appointing, from Time to Time, the Judges and Officers thereof, as His Majesty, His Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

All Acts formerly made are hereby inforced within the Province.

XVIII. Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of *Quebec*, any Act or Acts of the Parliament of *Great Britain* heretofore made for prohibiting, restraining, or regulating, the Trade or Commerce of His Majesty's Colonies and Plantations in *America*; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies or Plantations, shall be, and are hereby declared to be, in Force, within the said Province of *Quebec*, and every Part thereof.

## XXXII

## THE QUEBEC REVENUE ACT, 1774

(14 George III, c. 88.)

*An Act to establish a fund towards further defraying the charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec in America.*

Preamble.

Whereas certain duties were imposed by the authority of his Most Christian Majesty upon wine, rum, brandy, *eau de vie de liqueur*, imported into the Province of Canada, now called the Province of Quebec, and also a duty of three pounds *per centum ad valorem* upon all dry goods imported into and exported from the

Certain duties imposed by his most Christian Majesty upon rum, brandy, etc., imported into Quebec

said Province, which duties susbisted at the time of the surrender of the said Province to your Majesty's forces in the late war: And whereas it is expedient that the said duties should cease and be discontinued, and that in lieu and instead thereof, other duties should be raised by the authority of Parliament for making a more adequate provision for defraying the charge of the administration of justice and the support of civil Government in the said Province: We, your Majesty's most dutiful and loyal subjects, the Commons of Great Britain in Parliament assembled, do most humbly beseech your Majesty that it may be

[1] For the method of raising provincial revenue, see Nos. XXXII, XXXIV.

enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same: That from and after the fifth day of April, one thousand, seven hundred and seventy-five, all the duties which were imposed upon rum, brandy, *eau de vie de liqueur*, within the said Province, and also of three pounds *per centum ad valorem* on dried goods imported into or exported from the said Province, under the authority of his most Christian Majesty, shall be and are hereby discontinued; and that in lieu and instead thereof there shall, from and after the said fifth day of April, one thousand seven hundred and seventy-five, be raised, levied, collected, and paid unto his Majesty, his heirs and successors, for and upon the respective goods hereinafter mentioned, which shall be imported or brought into any part of the said Province, over and above all other duties now payable in the said Province, by any Act or Acts of Parliament, the several rates and duties following: that is to say,

after April 5, 1775, to be discontinued within the Province,

and instead of which the following duties to be paid to His Majesty.

*For every gallon of brandy, or other spirits, of the manufacture of Great Britain, three-pence.*

The rates.

*For every gallon of rum, or other spirits, which shall be imported or brought from any of his Majesty's sugar colonies in the West Indies, six-pence.*

*For every gallon of rum, or other spirits which shall be imported or brought from any other of his Majesty's colonies or dominions in America, nine-pence.*

*For every gallon of foreign brandy, or other spirits of foreign manufacture imported or brought from Great Britain, one shilling.*

*For every gallon of rum or spirits of the produce or manufacture of any of the Colonies or Plantations in America, not in the possession or under the dominion of his Majesty, imported from any other place except Great Britain, one shilling.*

*For every gallon of molasses and syrups which shall be imported or brought into the said Province in ships or vessels belonging to his Majesty's subjects in Great Britain or Ireland, or to his Majesty's subjects in the said Province, three-pence.*

*For every gallon of molasses and syrups, which shall be imported or brought into the said Province in any other ships or vessels in which the same may be legally imported, six-pence; and after those rates for any greater or less quantity of such goods respectively.*

II. And it is hereby further enacted by the authority aforesaid, that the said rates and duties charged by this Act shall be deemed, and are hereby declared to be, sterling money of Great Britain, and shall be collected, recovered, and paid to the amount of the value of which such nominal sums bear in Great Britain; and that such monies may be received and taken according to the proportion and value of five shillings and six-pence the ounce in silver; and that the said duties hereinbefore granted shall be raised, levied, collected, paid, and recovered, in the same manner and form, and by such rules, ways, and means, and under such penalties and forfeitures, except in such cases where any alteration is made by this Act, as any other duties payable to his Majesty upon goods imported into any British Colony or Plantation in America are or shall be raised, levied, collected, paid, and recovered, by any Act or Acts of Parliament, as fully and effectually, to all intents and purposes, as if the several clauses, powers, directions, penalties, and forfeitures relating thereto, were particularly repeated and again enacted in the body of this present Act: and that all the monies that shall arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same), shall be paid by the Collector of his Majesty's Customs, into the hands of his Majesty's Receiver-General in the said Province for the time being, and shall be applied in the first place in making a more certain and adequate provision towards defraying the expences of the administration of justice and of the support of Civil Government in the said Province; and that the Lord High Treasurer, or Commissioners of his Majesty's Treasury, or any three or more of them for the time being, shall be, and is or are hereby impowered, from time to time, by any warrant or warrants under his or their hand or hands, to cause such money to be applied out of the said produce of the said duties, towards defraying the said expences; and that the residue of the said duties shall remain and be reserved in the hands of the said Receiver-General, for the future disposition of Parliament.

Rates deemed sterling money of Great Britain.

how they are to be levied, etc.,

to whom they are to be paid,

and how to be applied.

III. And it is hereby further enacted by the authority aforesaid that if any goods chargeable with any of the said duties herein-before mentioned shall be

Regulations with respect

to goods brought into the Province chargeable with the duties before mentioned.

brought into the said Province by land carriage, the same shall pass and be carried through the port of St. John's, near the River Sorrel; or if such goods shall be brought into the said Province by any inland navigation other than upon the River St. Lawrence, the same shall pass and be carried upon the said River Sorrel by the said port, and shall be there entered with, and the said respective rates and duties paid for the same, to such officer or officers of his Majesty's Customs as shall be there appointed for that purpose; and if any such goods coming by land carriage or inland navigation, as aforesaid, shall pass by or beyond the said place before named, without entry or payment of the said rates and duties, or shall be brought into any part of the said Province by or through any other place whatsoever, the said goods shall be forfeited; and every person who shall be assisting, or otherwise concerned in the bringing or removing such goods, or to whose hands the same shall come, knowing that they were brought or removed contrary to this Act, shall forfeit treble the value of such goods, to be estimated and computed according to the best price that each respective commodity bears in the Town of Quebec, at the time such offence shall be committed; and all the horses, cattle, boats, vessels, and other carriages whatsoever, made use of in the removal, carriage, or conveyance of such goods, shall also be forfeited and lost, and shall and may be seized by any officer of his Majesty's Customs, and prosecuted as hereinafter mentioned.

Penalties and forfeitures where to be prosecuted for, etc.

IV. And it is hereby further enacted by the authority aforesaid, that the said penalties and forfeitures by this Act inflicted, shall be sued for and prosecuted in any Court of Admiralty, or Vice-Admiralty, having jurisdiction within the said Province, and the same shall and may be recovered and divided in the same manner and form, and by the same rules and regulations in all respects as other penalties and forfeitures for offences against the laws relating to the customs and trade of his Majesty's Colonies in America shall or may, by any Act or Acts of Parliament be sued for, prosecuted, recovered, and divided.

Any person keeping a house of public entertainment to pay £1 16*s.* for a license.

V. And be it further enacted by the authority aforesaid, that there shall from and after the fifth day of April, one thousand seven hundred and seventy-five, be raised, levied, collected and paid unto his Majesty's Receiver-General of the said Province for the use of his Majesty, his heirs and successors, a duty of one pound sixteen shillings, sterling money of Great Britain, for every licence that shall be granted by the Governor, Lieutenant-Governor, or Commander in Chief of the said Province to any person or persons for keeping a house or any other place of publick entertainment, or for the retailing wine, brandy, rum, or any other spirituous liquors within the said Province; and any person keeping any such house or place of entertainment, or retailing any such liquors without such licence shall forfeit and pay the sum of ten pounds for every such offence, upon conviction thereof; one moiety to such person as shall inform or prosecute for the same, and the other moiety shall be paid into the hands of the Receiver-General of the Province for the use of his Majesty.

Penalty of £10 for every offence.

Not to make void French revenues, etc., reserved at the conquest.

VI. Provided always that nothing herein contained shall extend or be construed to extend to discontinue, determine, or make void any part of the territorial or casual revenues, fines, rents, or profits whatsoever, which were reserved to, and belonged to his Most Christian Majesty, before and at the time of the conquest and surrender thereof to his Majesty, the King of Great Britain; but that the same and every of them, shall remain and be continued to be levied, collected, and paid in the same manner as if this Act had never been made: anything therein contained to the contrary notwithstanding.

In suits brought pursuant to this Act, defendants to have treble costs.

VII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced against any person or persons for anything done in pursuance of this Act, and if it shall appear to the Court or Judge where or before whom the same shall be tried, that such action or suit is brought for anything that was done in pursuance of, and by the authority of this Act, the defendant or defendants shall be indemnified and acquitted for the same; and if such defendant or defendants shall be so acquitted; or if the plaintiff shall discontinue such action or suit, such Court or judge shall award to the defendant or defendants treble costs.

## XXXIII.

## ADDRESS OF THE GENERAL CONGRESS TO THE INHABITANTS OF THE PROVINCE OF QUEBEC[1]

October 26th, 1774.

Friends and Fellow-Subjects,

We, the delegates of the colonies of New-Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New-Jersey, Pennsylvania, the counties of Newcastle, Kent and Sussex on the Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed by the inhabitants of the said Colonies, to represent them in a general congress at Philadelphia, in the province of Pennsylvania, to consult together of the best methods to obtain redress of our afflicting grievances, having accordingly assembled, and taken into our most serious consideration the state of public affairs on this continent, have thought proper to address your province, as a member therein deeply interested.

When the fortune of war, after a gallant and glorious resistance, had incorporated you with the body of English subjects, we rejoiced in the truly valuable addition, both on our own and your account; expecting, as courage and generosity are naturally united, our brave enemies would become our hearty friends, and that the Divine Being would bless to you the dispensations of his over-ruling Providence, by securing to you and your posterity the inestimable advantages of a free English constitution of government, which it is the privilege of all English subjects to enjoy.

These hopes were confirmed by the King's proclamation, issued in the year 1763, plighting the public faith for your full enjoyment of those advantages.

Little did we imagine that any succeeding ministers would so audaciously and cruelly abuse the royal authority, as to withhold from you the fruition of the irrevocable rights, to which you were thus justly entitled.

But since we have lived to see the unexpected time, when ministers of this flagitious temper have dared to violate the most sacred compacts and obligations, and as you, educated under another form of government, have artfully been kept from discovering the unspeakable worth of that form you are now undoubtedly entitled to, we esteem it our duty, for the weighty reasons hereinafter mentioned, to explain to you some of its most important branches.

"In every human society, (says the celebrated Marquis Beccaria) there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and to diffuse their influence universally and equally."

Rules stimulated by this pernicious "effort", and subjects, animated by the just "intent of opposing good laws against it," have occasioned that vast variety of events, that fill the histories of so many nations. All these histories demonstrate the truth of this simple position, that to live by the will of one man, or set of men, is the production of misery to all.

On the solid foundation of this principle, Englishmen reared up the fabric of their constitution with such a strength, as for ages to defy time, tyranny, treachery, internal and foreign wars: and as an illustrious author of your nation, hereafter mentioned, observes, "They gave the people of their colonies the form of their own government, and this government carrying prosperity along with it, they have grown great nations in the forests they were sent to inhabit."

In this form the first grand right is that of the people having a share in their own government by their representatives, chosen by themselves, and in consequence of being ruled by laws which they themselves approve, not by edicts of men over whom they have no control. This is a bulwark surrounding and defending their property, which by their honest cares and labours they have acquired, so that no portions of it can legally be taken from them, but with their own full and free consent, when they in their judgment deem it just and necessary to give them for public services: and precisely direct the easiest, cheapest, and most equal methods, in which they shall be collected.

[1] This document illustrates the attempt by the American colonies to induce Canada to take part in the continental congress of 1775. See Smith, J. H., *Our Struggle for the Fourteenth Colony* (2 vols., New York, 1907).

The influence of this right extends still farther. If money is wanted by rulers, who have in any manner oppressed the people, they may retain it, until their grievances are redressed; and thus peaceably procure relief, without trusting to despised petitions, or disturbing the public tranquillity.

The next great right is that of trial by jury. This provides, that neither life, liberty, nor property can be taken from the possessor, until twelve of his unexceptionable countrymen and peers, of his vicinage, who from their neighbourhood may reasonably be supposed to be acquainted with his character, and the characters of the witnesses, upon a fair trial, and full enquiry, face to face, in open court, before as many of the people as choose to attend, shall pass their sentence upon oath against him; a sentence that cannot injure him, without injuring their own reputation, and probably their interest also; as the question may turn on points that in some degree, concern the general welfare: and if it does not, their verdict may form a precedent, that, on a similar trial of their own, may militate against them.

Another right relates merely to the liberty of the person. If a subject is seized and imprisoned, though by order of government, he may, by virtue of this right, immediate obtain a writ, termed a Habeas Corpus, from a judge, whose sworn duty it is to grant it, and thereupon procure any illegal restraint, to be quickly enquired into and redressed.

A fourth right is, that of holding lands by the tenure of easy rents, and not by rigorous and oppressive services, frequently forcing the possessors from their families and their business, to perform what ought to be done, in all well regulated states, by men hired for the purpose.

The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science and morality, and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs.

These are the invaluable rights that form a considerable part of our mild system of government: that sending its equitable energy through all ranks and classes of men, defends the poor from the rich, the weak from the powerful, the industrious from the rapacious, the peaceable from the violent, the tenants from the lords, and all from their superiors.

These are the rights, without which a people cannot be free and happy, and under the protection and encouraging influence of which, these colonies have hitherto so amazingly flourished and increased. These are the rights a profligate ministry are now striving, by force of arms, to ravish from us, and which we are, with one mind, resolved never to resign but with our lives.

These are the rights you are entitled to, and ought at this moment in perfection to exercise. And what is offered to you by the late act of parliament in their place? Liberty of conscience in your religion? No. God gave it to you; and the temporal powers with which you have been and are connected firmly stipulated for your enjoyment of it. If laws divine and human, could secure it against the despotic capacities of wicked men, it was secured before. Are the French laws in civil cases restored? It seems so. But observe the cautious kindness of the ministers who pretend to be your benefactors. The words of the statute are, that those "laws shall be the rule, until they shall be varied, or altered by any ordinances of the governor and council." Is the "certainty and lenity of the criminal law of England, and its benefits and advantages", commended in the said statute, and said to "have been sensibly felt by you," secured to you and your descendants? No. They too are subject to arbitrary "alterations" by the governor and council; and a power is expressly reserved of "appointing such courts of criminal, civil, and ecclesiastical jurisdiction, as shall be thought proper." Such is the precarious tenure of mere will, by which you hold your lives and religion.

The crown and its ministers are empowered, as far as they could be by parliament, to establish even the *inquisition* itself among you. Have you an assembly composed of worthy men elected by yourselves, and in whom you can confide, to make laws for you, to watch over your welfare, and to direct in what quantity, and in what manner your money shall be taken from you? No. The power of making laws for you is lodged in the governor and council, all of them dependent

upon, and removeable at the *pleasure* of a minister.—Besides, another late statute made without your consent, has subjected you to the imposition of *excise*, the horror of all free states; they wresting your property from you by the most odious taxes, and laying open to insolent tax-gatherers, houses the scenes of domestic peace and comfort, and called the castles of English subjects in the books of their laws. And in the very act for altering your government, and intended to flatter you, you are not authorized to "assess, levy, or apply any *rates* and taxes, but for the inferior purposes of *making roads*, and erecting and repairing *public buildings*, or for other *local* conveniences, within your respective towns and districts." Why this degrading distinction? Ought not the property honestly acquired by *Canadians* to be held as sacred as that of *Englishmen*? Have not Canadians sense enough to attend to any other public affairs, than gathering stones from one place and piling them up in another? Unhappy people! who are not only injured, but insulted. Nay more!—With such a superlative contempt of your understanding and spirit has an insolent ministry presumed to think of you, our respectable fellow-subjects, according to the information we have received, as firmly to persuade themselves that your gratitude, for the injuries and insults they have recently offered to you, will engage you to take up arms, and render yourselves the ridicule and detestation of the world, by becoming tools, in their hands, to assist them in taking that freedom from *us*, which they have treacherously denied to *you*; the unavoidable consequence of which attempt, if successful, would be the extinction of all hopes of you or your posterity being ever restored to freedom: for idiocy itself cannot believe, that, when their drudgery is performed, they will treat you with less cruelty than they have us, who are of the same blood with themselves.

What would your countryman, the immortal *Montesquieu*, have said to such a plan of domination, as has been framed for you? Hear his words, with an intenseness of thought suited to the importance of the subject.—"In a free state, every man, who is supposed a free agent, *ought to be concerned in his own government*; therefore the *legislative* should reside in the whole body of the *people*, or their *representatives*."—"The political liberty of the subject is a *tranquillity of mind*, arising from the opinion each person has of his *safety*. In order to have this liberty, it is requisite the government be so constituted, that one man need not be *afraid* of another. When the power of *making* laws, and the power of *executing* them are united in the same person, or in the same body of magistrates, *there can be no liberty*; because apprehensions may arise, lest the same *monarch* or *senate* should *enact* tyrannical laws, to *execute* them in a tyrannical manner."

"The power of *judging* should be exercised by persons taken from the *body of the people*, at certain times of the year, and pursuant to a form and manner prescribed by law. *There is no liberty*, if the power of *judging* be not *separated* from the *legislative* and *executive* powers.'

"Military men belong to a profession which *may* be useful, but is *often* dangerous.—The enjoyment of liberty, and even its support and preservation, consists in every man's being allowed to speak his thoughts, and lay open his sentiments."

Apply these decisive maxims, sanctioned by the authority of a name which all Europe reveres, to your own state. You have a governor, it may be urged, vested with the *executive* powers, or the powers of *administration*. In him, and in your council, is lodged the power of *making laws*. You have *judges*, who are to *decide* every cause affecting your lives, liberty or property. Here is, indeed, an appearance of the several powers being *separated* and *distributed* into *different* hands, for checks one upon another, the only effectual mode ever invented by the wit of men, to promote their freedom and prosperity. But scorning to be illuded by a tinselled outside, and exerting the natural sagacity of Frenchmen, *examine* the specious device, and you will find it, to use an expression of Holy Writ, "a painted sepulchre," for burying your lives, liberty and property.

Your *judges*, and your *legislative council*, as it is called, are *dependent* on your Governor, and he is dependent on the servant of the Crown in Great Britain. The *legislative, executive*, and *judging* powers are all moved by the nods of a minister. Privileges and immunities last no longer than his smiles. When he frowns, their feeble forms dissolve. Such a treacherous ingenuity has been exerted in drawing up the code lately offered you, that every sentence beginning with a benevolent pretension, concludes with a destructive: and the substance of the whole, divested of its smooth words, is—that the crown and its minister shall be as absolute throughout your extended province, as the despots of Asia and Africa. What can

protect your property from taxing edicts, and the rapacity of necessitous and cruel masters? Your persons from *lettres de cachet*, gaols, dungeons, and oppressive service? your lives and general liberty from arbitrary and unfeeling rulers? We defy you, casting your view upon every side, to discover a single circumstance, promising from any quarter the faintest hope of liberty to you or your posterity, but from an entire adoption into the union of these colonies.

What advice would the truly great man before mentioned, that advocate of freedom and humanity, give you, was he now living, and knew that we, your numerous and powerful neighbours, animated by a just love of our invaded rights, and united by the indissoluble bands of affection and interest, called upon you, by every obligation of regard for yourselves and your children, as we now do, to join us in our righteous contest, to make a common cause with us therein, and to take a noble chance of emerging from a humiliating subjection under governors, intendants, and military tyrants, into the firm rank and condition of English freemen, whose custom it is, derived from their ancestors, to make those tremble who dare to think of making them miserable.

Would not this be the purport of his address? "Seize the opportunity presented to you by Providence itself. You have been conquered into liberty, if you act as you ought. This work is not of man. You are a small people, compared to those who with open arms invite you into fellowship. A moment's reflection should convince you which will be most for your interest and happiness, to have all the rest of North America your unalterable friends, or your inveterate enemies. The injuries of Boston have roused and associated every colony, from Nova Scotia to Georgia. Your province is the only link that is wanting to complete the bright and strong chain of union. Nature has joined your country to theirs. Do you join your political interests. For their own sakes they never will desert or betray you. Be assured that the happiness of a people inevitably depends on their liberty, and their spirit to assert it. The value and extent of the advantages tendered to you are immense. Heaven grant you may not discover them to be blessings after they have bid you an eternal adieu."

We are too well acquainted with the liberality of sentiment distinguishing your nation, to imagine, that difference of religion will prejudice you against a hearty amity with us. You know, that the transcendent nature of freedom elevates those, who unite in the cause, above all such low-minded infirmities. The Swiss Cantons furnish a memorable proof of this truth. Their union is composed of Catholic and Protestant states, living in the utmost concord and peace with one another, and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them.

Should there be any among you, as there generally are in all societies, who prefer the favours of ministers, and their own interests, to the welfare of their country; the temper of such selfish persons will render them incredibly active in opposing all public-spirited measures, from an expectation of being well rewarded for their sordid industry by their superiors: but we doubt not you will be upon your guard against such men, and not sacrifice the liberty and happiness of the whole Canadian people and their posterity, to gratify the avarice and ambition of individuals.

We do not ask you, by this address, to commence hostilities against the government of our common sovereign. We only invite you to consult your own glory and welfare, and not to suffer yourselves to be inveigled or intimidated by infamous ministers so far as to become the instruments of their cruelty and despotism, but to unite with us in one social compact, formed on the generous principles of equal liberty, and cemented by such an exchange of beneficial and endearing offices as to render it perpetual. In order to complete this highly desirable union, we submit it to your consideration, whether it may not be expedient for you to meet together in your several towns and districts, and elect deputies who after meeting in a provincial congress, may chuse delegates, to represent your province in the continental congress, to be held at Philadelphia, on the tenth day of May, 1775.

In this present congress, beginning on the fifth of last month, and continued to this day, it has been with universal pleasure, and an unanimous vote, resolved, that we should consider the violation of your rights, by the act for altering the government of your province, as a violation of our own; and that you should be invited to accede to our confederation, which has no other objects than the perfect security of the natural and civil rights of all the constituent members,

according to their respective circumstances, and the preservation of a happy and lasting connection with Great Britain, on the salutary and constitutional principles herein before mentioned. For effecting these purposes, we have addressed an humble and loyal petition to his Majesty, praying relief of our grievances; and have associated to stop all importation from Great Britain and Ireland, after the first day of December, and all exportation to those kingdoms and the West Indies, after the tenth day of next September, unless the said grievances are redressed.

That Almighty God may incline your minds to approve our equitable and necessary measures, to add yourselves to us, to put your fate, whenever you suffer injuries which you are determined to oppose, not on the small influence of your single province, but on the consolidated powers of North America, and may grant to our joint exertions an event as happy as our cause is just, is the fervent prayer of us, your sincere and affectionate friends and fellow-subjects.

HENRY MIDDLETON, President.

By order of the Congress
Oct. 26, 1774.

# FOURTH PERIOD

## 1774–1791

# FOURTH PERIOD

## 1774–1791

The Quebec act was almost still-born, owing to the breaking out of hostilities between England and the thirteen colonies. At any rate, according to the opinion of Haldimand, its passing prevented Canada from becoming a fourteenth state of the Union (see No. XL). The war, however, did not entirely suppress the demands of the British in Canada for a house of assembly, and as soon as peace was declared in 1783 these demands were reinforced by the arrival in Canada of those colonial citizens—known to history as the united empire loyalists—who had remained loyal to the British connexion during the revolutionary war.

Carleton, now Lord Dorchester, returned to Canada for his second term of office as governor in 1786, and there lay before him a complicated task. The 'ancient subjects', that is, the British in Canada, persisted in their demands for a 'new and free constitution', which now included, in addition to a house of assembly, the right of taxation and some control over the executive (see Nos. XLIII, XLIV). The united empire loyalists, though loyal to the monarchical principle, were nothing behind the fathers of American federation in their claim to representative institutions. Further advanced than contemporary Englishmen in political thought, it soon became evident to Dorchester that they would not complacently endure the constitutional system erected by the Quebec act. On the other hand, the French Canadians were still children in political experience, to whom representative institutions were only 'une machine anglaise pour nous taxer'. Dorchester's problem was no easy one. Would it be possible out of such opposing forces to present an equitable solution?

The 'ancient subjects' began the struggle with numerous dispatches and petitions, of which examples are given, and in 1788 they sent Adam Lymburner to London, who stated their case at the bar of the house of commons. The way did not lie very clearly before the government. However, as the united empire loyalists had to a large extent settled west of the French Canadians in what is now the province of Ontario, the government decided, against Dorchester's wish, to divide the province (see No. XLVII), and they submitted a draft constitution to the governor in October, 1789. Grenville's covering dispatch (see No. XLIX) is of interest, as it outlines a new departure in Canadian government. In addition, the heart-searchings over a new constitution gave rise to a famous suggestion contained in an opinion which Dorchester obtained from chief justice William Smith. The proposal was in reality one for the federation of British North America (see Nos. LII, LIII). However, the time was not ripe and the constitutional act was passed in 1791 (see No. LIV), which provided for the division of the province by an order in council. This order was duly issued on August 24, 1791. In September, Dorchester was appointed captain-general and governor-in-chief of both provinces. Houses of assembly were established in each division.

The documents given below illustrate the various difficulties which led to the drawing up of a new constitution.

## XXXIV

## THE QUEBEC REVENUE ACT, 1775

(15 George III, c. 40.)

*An Act for amending and explaining an Act, passed in the fourteenth year of his Majesty's reign, intituled "An Act*[1] *to establish a Fund towards further defraying the charges of the Administration of Justice and support of the Civil Government within the Province of Quebec, in America."*

Preamble.

Clause in Act 14 George III, recited.

Whereas by an Act passed in the fourteenth year of his Majesty's reign (intituled, "An Act to establish a fund towards further defraying the charges of the administration of justice and support of the Civil Government within the Province of Quebec in America"), it is amongst other things enacted, that if any goods, chargeable with any of the duties in the said Act mentioned, shall be brought into the said Province by land carriage, the same shall pass and be carried through the Port of Saint John's, near the River Sorrel; or if such goods shall be brought into the said Province by any inland navigation other than that upon the River Saint Lawrence, the same shall pass and be carried upon the said River Sorrel by the said port, and shall be there entered with, and the said respective rates and duties paid for the same to such officer or officers of his Majesty's customs as shall there be appointed for that purpose; and if any such goods, coming by land carriage or inland navigation, as aforesaid, shall pass by or beyond the said place before named, without entry or payment of the said rates and duties, or shall be brought into any part of the said Province by or though any other place whatsoever, the said goods shall be forfeited; and every person who shall be assisting, or otherwise concerned in the bringing or removing such goods, or to whose hands the same shall come, knowing that they were brought or removed contrary to this Act, shall forfeit treble the value of such goods; to be estimated and computed according to the best price that each respective commodity bears in the town of Quebec at the time such offence shall be committed; and all the horses, cattle, boats, vessels, and other carriages whatsoever, made use of in the removal, carriage or conveyance of such goods, shall be forfeited and lost, and shall and may be seized by any officer of his Majesty's Customs, and prosecuted as thereinafter mentioned: And whereas there is reason to apprehend that the regulations and restrictions contained in the said hereinbefore recited clause, so far as they relate to the bringing of rum, brandy, or other spirits into the Province of Quebec by land carriage, may, without further explanation, operate to the prejudice and disadvantage of the commerce carried on with the Indians in the upper or interior parts of the said Province: We, your Majesty's most dutiful and loyal subjects, the Commons of Great Britain in Parliament assembled, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful to and for all his Majesty's subjects freely to bring, carry or convey, by land carriage, or inland navigation, into any parts of the Province of Quebec, not heretofore comprehended within the limits thereof by his Majesty's Royal Proclamation of the seventh of October, one thousand seven hundred and sixty-three, any quantity of rum, brandy, or other spirits, anything contained in the before-recited Act of Parliament to the contrary thereof in any wise notwithstanding.

His Majesty's subjects may bring, by land or inland navigation, into any parts of Quebec not heretofore comprehended in the Royal Proclamation of Oct. 7, 1763, any quantity of rum, brandy, etc.

## XXXV

## INSTRUCTIONS TO GOVERNOR CARLETON, 1775[2]

[Trans.: Shortt and Doughty.]

2. It is Our further Will and Pleasure, that any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted, (in which Case you are not to act without a Majority of the whole,) And it is Our further Will

[1] 14 George III, c. 88. (See No. XXXII.)

[2] These instructions were sent by lord Dartmouth to Carleton on January 7, 1775.

and Pleasure, that the Members of Our said Council shall have and enjoy all the Powers, Privileges, and Emoluments enjoyed by the Members of Our Council in Our other Plantations; and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to you; and that they shall meet together at such time and times, place and places, as you in your discretion shall think necessary, except when they meet for the purpose of Legislation, in which Case they are to be assembled at the Town of Quebec only.

* * * * * *

4. And whereas by an Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual provision for the Government of the Province "of Quebec in North America," it is enacted and provided, that no person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of the reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof; but that every such Person, who by the said Statute is required to take the oaths therein mentioned, shall be obliged, and is thereby required, under certain Penalties, to take and subscribe an Oath in the form and Words therein prescribed, and set down; It is therefore Our Will and Pleasure, that you do administer to each and every Member of Our said Council, being a Canadian, and professing the Religion of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth year of Our Reign, intituled; "An Act for making more "effectual provision for the Government of the Province of Quebec in North "America;" and also cause them severally to take an oath for the due Execution of their places and Trusts, and for their equal and impartial administration of Justice.

5. And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, you are from time to time to transmit to Us, by one of Our Principal Secretaries of State, the names and Characters of such persons, Inhabitants of Our said Colony, whom you shall esteem the best qualified for that Trust; And you are also to transmit a duplicate of the said Account to Our Commissioners for Trade and Plantations, for their Information.

6. And if it shall at any time happen, that by the death or departure out of Our said Province, of any of Our said Councillors, there shall be a Vacancy in Our said Council, Our Will and Pleasure is: that you signify the same to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, by the first Opportunity, that We may by Warrant under Our Signet and Sign Manual, and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others from time to time, as you shall find convenient for Our Service to be imparted to them.

8. You are to permit the Members of Our said Council to have and Enjoy Freedom of Debate and vote in all Affairs of Public Concern, that may be debated in Council.

9. And Whereas by the aforesaid Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual provision for the Govern- "ment of the Province of Quebec in North America," It is further enacted and provided, that the Council for the Affairs of the said Province, to be constituted and appointed in Manner therein directed, or the Major Part thereof, shall have power and Authority to make Ordinances for the peace, Welfare, and good Government of the said Province with the Consent of Our Governor, or, in his absence, of the Lieutenant Governor, or Commander in Chief for the time being; provided, that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first day of January and the first day of May. And Whereas the State and Condition of Our said Province do require, that immediate provision should be made by Law for a Great Variety of Arrangements and Regulations essentially necessary to the Government thereof; It is therefore Our Will and Pleasure, that you do within a convenient time issue Summons for the Assembling of Our said Council in their Legislative Capacity either on the first day of April next, or as soon after as may be con-

venient, in Order to deliberate upon, and frame such Ordinances, as the Condition of Affairs within Our said Province shall require, and as shall in your and their Judgement, be fit and necessary for the Welfare of Our said Province, and the Territories thereunto belonging.

10. You are nevertheless to take especial Care,

That no Ordinance be passed at any Meeting of the Council, where less than a Majority of the Council is present, or at any time, except between the first day of January and the first day of May, as aforesaid, unless upon some urgent Occasion; in which Case every Member thereof resident at Quebec, or within fifty Miles thereof shall be personally summoned to attend the same.

That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted, as the Inhabitants of any Town or District may be authorized to assess, levy and apply within the said Town or District, for the making Roads, erecting and repairing public Buildings, or for any other purpose respecting the Local Convenience and Œconomy of such Town or District.

That no Ordinance touching Religion, or by which any punishment may be inflicted greater than Fine or Imprisonment for three Months be made to take effect, until the same shall have received Our Approbation.

That no Ordinance be passed relative to the Trade, Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing, than any other His Majesty's Subjects either of this Kingdom, or the Plantations.

That no Ordinance respecting private property be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known; nor without a saving of the Right of Us, Our Heirs and Successors, and of all Bodies politic and corporate, and of all other persons, except such as are mentioned in the said Ordinance, and those claiming by, from, and under them; And before such Ordinance is passed, proof must be made before you in Council, and entered in the Council-Books, that public Notification was made of the Party's Intention to apply for such Ordinance in the several Parish Churches, where the Lands in Question lye, for three Sundays at least successively, before any such Ordinance shall be proposed; and you are to transmit and annex to the said Ordinance a Certificate under your hand that the same passed through all the Forms above mentioned.

That no Ordinance shall be enacted for a less time than two years, except in Cases of imminent Necessity, or immediate temporary Expediency; and you shall not reenact any Ordinance, to which Our Assent shall have been once refused, without express leave for that purpose first obtained from Us, upon a full representation by you to be made to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their Information, of the Reasons and Necessity for passing such Ordinance; nor give your Assent to any Ordinance for repealing any other Ordinance, which hath passed in your Government, and shall have received Our Royal Approbation, unless you take Care, that there be a Clause inserted therein suspending and deferring the Execution thereof, until Our Pleasure shall be known, concerning the same.

That in all Ordinances imposing Fines, Forfeitures or Penalties, express Mention be made, that the same is granted, or reserved to Us, Our Heirs and Successors for the public Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed; and that a Clause be inserted declaring, that the Money, arising by the Operation of the said Ordinance, shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being; and audited by Our Auditor General of Our Plantations, or his Deputy.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner, if opportunity offers, to Us by One of Our Principal Secretaries of State, and Duplicates thereof to Our Commissioners for Trade and Plantations, for their Information; that they be abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive to a new Law, or does repeal a Law then before in being; and you are also to transmit in the fullest manner the Reasons and Occasion for enacting such Ordinances, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11. In the Consideration of what may be necessary to be provided for by Law

within Our said Province, as created and established by the aforesaid Act, Intituled, "an Act for making more effectual Provision for the Government of "the Province of Quebec in North America," a Great Variety of important Objects hold themselves forth to the Attention of the Legislative Council.

12. The Establishment of Courts, and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province, according to the Principles declared in the said Act "for making more effectual Provision "for the Government thereof," demand the greatest Care and Circumspection; for, as on the one hand it is Our Gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the benefit and use of their own Laws, Usages and Customs in all Controversies respecting Titles of Land, and the Tenure, descent, Alienation, Incumbrances, and Settlement of Real Estates, and the distribution of the personal property of Persons dying intestate; so on the other hand, it will be the duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the decision in all Cases of personal Actions, grounded upon Debts, Promises, Contracts, and Agreements, whether of a Mercantile or other Nature; and also of Wrongs proper to be compensated in damages; and more especially where Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations residing at Quebec, or who may resort thither, or have Credits, or Property within the same, may happen to be either Plaintiff or defendant in any civil Suit of such a nature.

13. Security to personal Liberty is a fundamental Principle of Justice in all free Governments, and the making due provision for that purpose is an object the Legislature of Quebec ought never to lose Sight of; nor can they follow a better Example than that, which the Common Law of this Kingdom hath set in the provision made for a Writ of Habeas Corpus, which is the Right of every British Subject in this Kingdom.

14. With regard to the Nature and number of the Courts of Justice, which it may be proper to establish, either for the whole Province at large, or separately for its dependencies, and the times and places for holding the said Courts, no certain Rule can be laid down in a Case, in which the Judgement must in many Respects at least be altogether guided by Circumstances of local Convenience and Consideration.

15. In General it may be proper, that there should be a Superior or Supreme Court of Criminal Justice and Jurisdiction for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever, to be held before the Chief Justice for the time being at such times and places, as shall be most convenient for the due and speedy Administration of Justice, and the preventing long Imprisonments; the said Court to be called and known by the name of the Court of King's Bench; That, for the more orderly establishment and Regulation of Courts of Civil Jurisdiction, the Province of Quebec, as limited and bounded by the aforesaid Act of Parliament "for making more effectual Pro- "vision for the Government of the Province of Quebec in North America," be divided into two Districts by the names of Quebec and Montreal, each district to be limited and bounded in such manner, as shall be thought best adapted to the Object of the Jurisdiction to be established therein; That there be established in each of the said Districts a Court of Common Pleas to be held at such times and places, as shall be judged most convenient, and to have full power, Jurisdiction and Authority to hear and determine all Civil Suits and Actions cognizable by the Court of Common Pleas in Westminster Hall, according to the Rules prescribed by the said Act of Parliament "for making more effectual Provision for "the Government of the Province of Quebec in North America," and according to such Laws and Ordinances, as shall from time to time be enacted by the Legislature of the said Province in manner therein directed; That there be three Judges in each of the said Courts of Common Pleas, that is to say, two of Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations, and one Canadian; and also one Sheriff appointed for each District; That besides the foregoing Courts of Criminal and Civil Jurisdiction for the Province at large, there be also an Inferior Court of Criminal and Civil Jurisdiction in each of the Districts of the Illinois, St. Vincenne, Detroit, Missilimakinac and Gaspée, by the names of the Court of King's Bench for such district, to be held at such times, as

shall be thought most convenient, with Authority to hear and determine in all Matters of Criminal Nature according to the Laws of England, and the Laws of the Province hereafter to be made and passed; and in all Civil Matters according to the Rules prescribed by the aforesaid Act of Parliament "for making more "effectual Provision for the Government of Quebec in North America;" That each of the said Courts shall consist of one judge, being a natural-born Subject of Great Britain, Ireland, or Our other Plantations, and of one other Person, being a Canadian, by the name of Assistant or Assessor, to give advice to the Judge in any Matter, when it may be necessary, but to have no Authority or Power to attest or issue any Process, or to give any Vote in any order, Judgement, or decree; That the said Judges so to be appointed, as aforesaid, for each District, shall have the same power and Authority in Criminal Cases, as is vested in the Chief Justice of Our said Province; and also the same Power and Authority in Civil Cases, as any other Judge of Common Pleas within Our said Province, excepting only that, in Cases of Treason, Murder, or other Capital Felonies, the said Judges shall have no other Authority, than that of Arrest and Commitment to the Goals of Quebec, or of Montreal, where alone Offenders in such Cases shall be tried before Our Chief Justice; That a Sheriff be appointed in each of the said Districts for the Execution of Civil and Criminal Process; That the Governor and Council (of which in the absence of the Governor and Lieutenant Governor, the Chief Justice is to be President) shall be a Court of Civil Jurisdiction for the hearing and determining all Appeals from the Judgement of the other Courts, where the matter in dispute is above the value of Ten Pounds; That any Five of the said Council, with the Governor, Lieutenant Governor, or Chief Justice, shall constitute a Court for that purpose; and that their Judgement shall be final in all Cases not exceeding the Value of £500 sterling, in which Cases an Appeal from their Judgement is to be admitted to Us in Our Privy Council. It is however Our Will and Pleasure, that no Appeal be allowed, unless security be first duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages, as shall be awarded by Us, in case the Sentence be affirmed; Provided nevertheless, where the matter in question relates to the taking, or demanding any Duty payable to us, or to any Fee of Office, or annual Rents, or other such like matter or thing, where the Rights in future may be bound, in all such Cases appeal to Us, in Our Privy Council is to be admitted, tho' the immediate sum or value appealed for be of less value. And it is Our further Will and Pleasure, that in all Cases, where Appeals are admitted unto Us in Our Privy Council, execution be suspended until the final determination of such Appeal, unless good and sufficient security be given by the Appellee to make ample restitution of all, that the Appellant shall have lost by means of such decree or judgement, in case, upon the determination of such Appeal, such decree or judgement should be reversed, and restitution awarded to the Appellant. Appeals unto Us in Our Privy Council are also to be admitted in all cases of Fines imposed for misdemeanors; Provided the Fines, so imposed, amount to, or exceed the sum of £100 sterling, the Appellant first giving good Security, that he will effectually prosecute the same and answer the Condemnation, if the sentence, by which such Fine was imposed in Quebec, be affirmed.

16. It is Our Will and Pleasure, that all Commissions to be granted by you to any person or persons to be judges or justices of the peace, or other necessary Officers, be granted during pleasure only.

17. You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient cause, which you shall signify in the fullest and most distinct manner to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their Information.

18. And whereas frequent complaints have heretofore been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered; and it being of the greatest importance to Our Service, and to the Welfare of Our Plantations, that Justice be every where speedily and duly administered; and that all disorders, delays, and other undue Practises in the Administration thereof be effectually prevented; We do particularly require you to take especial Care, that in all Courts, where you are or shall be authorized to preside, justice be impartially administered; and that in all other Courts established, or to be established within Our said Province, all Judges, and other persons therein concerned do likewise perform their several Duties without any delay or partiality.

19. You are to take care, that all Writs be issued in Our Name throughout the Province under your Government.

20. The establishment of proper regulations in matters of ecclesiastical concern is an Object of very great importance, and it will be your indispensable duty to lose no time in making such arrangements in regard thereto, as may give full satisfaction to Our new Subjects in every point, in which they have a right to any indulgence on that head; always remembering, that it is a toleration of the free exercise of the religion of the Church of Rome only, to which they are entitled, but not to the power and privileges of it, as an established Church, for that is a preference, which belongs only to the Protestant Church of England.

21. Upon these principles therefore, and to the end, that Our just Supremacy in all matters ecclesiastical, as well as civil, may have its due scope and influence, it is Our Will and Pleasure,—

First, that all appeals to, or correspondence with any foreign ecclesiastical jurisdiction of what nature or kind so ever, be absolutely forbidden under very severe Penalties.

Secondly, That no Episcopal or Vicarial Powers be exercised within Our said Province by any Person professing the Religion of the Church of Rome, but such only, as are essentially and indispensably necessary to the free exercise of the Romish Religion; and in those cases not without a Licence and Permission from you under the Seal of Our said Province, for, and during Our Will and Pleasure, and under such other limitations and restrictions, as may correspond with the spirit and provisions of the Act of Parliament, "for the making more effectual "provision for the Government of the Province of Quebec;" And no person whatever is to have holy Orders conferred upon him, or to have the Cure of Souls without a Licence for that purpose first had or obtained from you.

Thirdly, That no person professing the Religion of the Church of Rome be allowed to fill any ecclesiastical Benefice, or to have and enjoy any of the Rights or Profits belonging thereto, that is not a Canadian by birth, (such only excepted, as are now in possession of any such Benefice,) and that is not appointed thereto by Us, or by, or under Our Authority, and that all Right, or claim of Right in any other Person whatever to nominate, present, or appoint to any vacant Benefice, other than such as may lay claim to the patronage of Benefices, as a Civil Right, be absolutely abolished. No Person to hold more than one Benefice, or at least not more than can reasonably be served by one and the same Incumbent.

Fourthly, That no person whatever, professing the Religion of the Church of Rome, be appointed Incumbent of any Parish, in which the Majority of the Inhabitants shall solicit the appointment of a Protestant Minister; in such Case the Incumbent shall be a Protestant, and entitled to all Tythes payable within such Parish; But nevertheless the Roman Catholicks may have the use of the Church for the free exercise of their Religion at such time, as may not interfere with the Religious Worship of the Protestants: And in like manner the Protestant Inhabitants in every Parish, where the Majority of Parishioners are Roman Catholicks, shall notwithstanding have the use of the Church for the exercise of their Religion at such times, as may not interfere with the Religious Worship of the Roman Catholicks.

Fifthly, That no Incumbent professing the Religion of the Church of Rome, appointed to any Parish, shall be entitled to receive any Tythes for Lands, or Possessions occupied by a Protestant; but such Tythes shall be received by such Persons, as you shall appoint, and shall be reserved in the hands of Our Receiver General, as aforesaid, for the support of a Protestant Clergy in Our said Province to be actually resident within the same, and not otherwise, according to such directions as you shall receive from Us in that behalf.—And in like manner all growing Rents and Profits of a vacant Benefice shall, during such vacancy, be reserved for, and applied to the like uses.

Sixthly, That all Persons professing the Religion of the Church of Rome, which are already possessed of, or may hereafter be appointed to any ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the Government of the "Province of Quebec in North America."

Seventhly, That all Incumbents of Parishes shall hold their respective Benefices

during good behaviour, subject however, in cases of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived, or suspended by you with the Advice and Consent of a Majority of Our said Council.

Eighthly, That such Ecclesiasticks, as may think fit to enter into the holy state of Matrimony, shall be released from all Penalties, to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly, That freedom of Burial of the Dead in Churches and Churchyards be allowed indiscriminately to every Christian Persuasion.

Tenthly, That the Royal Family be prayed for in all Churches and Places of Holy Worship, in such manner and form, as are used in this Kingdom; and that Our Arms and Insignia be put up not only in all such Churches and Places of Holy Worship, but also in all Courts of Justice; and that the Arms of France be taken down in every such Church or Court, where they may at present remain.

Eleventhly, That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess and occupy their Houses of Residence, and all other Houses and Lands, to which they were lawfully intitled on the 13th of September, 1759; and it shall be lawful for those Societies to fill up Vacancies, and admit new Members according to the Rules of their Foundations, and to educate Youth, in order to qualify them for the Service of Parochial Cures; as they shall become vacant. It is nevertheless Our Will and Pleasure, that not only these Seminaries, but all other Religious Communities, so long as the same shall continue, be subject to visitation by You Our Governor, or such other Person, or Persons, as you shall appoint for that purpose, and also subject to such Rules and Regulations, as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

Twelfthly, It is also Our Will and Pleasure, that all other Religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them, and how far they are, or are not, essential to the free exercise of the Religion of the Church of Rome, as allowed within Our said Province, remain upon their present Establishment; but you are not to allow the admission of any new Members into any of the said Societies or Communities, the Religious Communities of Women only excepted, without our express orders for that purpose. That the Society of Jesuits be suppressed and dissolved, and no longer continued, as a Body corporate and politic, and all their Rights, Possessions and Property shall be vested in Us for such purposes, as We may hereafter think fit to direct and appoint; but We think fit to declare Our Royal Intention to be, that the present Members of the said Society, as established in Quebec shall be allowed sufficient stipends and Provisions during their natural Lives; —That all Missionaries amongst the Indians, whether established under the Authority of, or appointed by the Jesuits, or by any other ecclesiastical Authority of the Romish Church, be withdrawn by degrees, and at such times and in such manner, as shall be satisfactory to the said Indians, and consistent with the Public Safety; and Protestant Missionaries appointed in their places; That all ecclesiastical Persons whatsoever, of the Church of Rome, be inhibited, upon the Pain of Deprivation, from influencing any Person in the making a Will, from inveigling Protestants to become Papists, or from tampering with them in matter of Religion, and that the Romish Priests be forbid to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize, or visit the sick, or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22. You are at all times and upon all occasions to give every Countenance and Protection in your Power to such Protestant Ministers, and School Masters, as are already established within Our said Province, or may hereafter be sent thither, to take care, that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid; that the Churches already appropriated, or which may hereafter be appropriated to the use of Divine Worship according to the Rites of the Church of England, as by Law established, be well and orderly kept; and, as the Number of Protestants shall, by God's blessing, increase, to lay out new Parishes in convenient Situations, and set apart and appropriate proper Districts of Land therein for the Scite of Churches, and Parsonage Houses, and for Glebes for the Ministers and Schoolmasters. . . .

30. The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects of Consideration,

The protection and control of the various Settlements of Canadian Subjects, and the regulation of the Peltry Trade in the upper or interior Country on the one hand, and the protection of the Fisheries in the Gulph of St. Lawrence, and on the Labrador Coast on the other hand, point to Regulations, that require deliberation and despatch.

31. The institution of inferior Judicatures with limited Jurisdiction in Criminal and Civil Matters for the Illinois, Poste St. Vincenne, the Detroit, Missilimakinac, and Gaspée has been already pointed out, and the Appointment of a Superintendant at each of these Posts is all, that is further necessary for their Civil concerns; But it will be highly proper that the Limits of each of those Posts, and of every other in the interior Country should be fixed and ascertained; and that no Settlement be allowed beyond those Limits; seeing that such Settlements must have the consequence to disgust the Savages; to excite their Enmity; and at length totally destroy the Peltry Trade, which ought to be cherished and encouraged by every means in your Power.

32. It is Our Royal Intention, that the Peltry Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain Licences from the Governors of any of Our said Colonies for that purpose, under Penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose; Those Regulations therefore, when established, must be made public throughout all Our American possessions, and they must have for their object the giving every possible facility to that Trade, which the nature of it will admit, and as may consist with fair and just dealing towards the Savages, with whom it is carried on. The fixing stated times and places for carrying on the Trade, and adjusting Modes of settling Tariffs of the prices of Goods and Furs, and, above all, the restraining the Sale of Spirituous Liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other regulations, incident to the nature and purpose of the Peltry Trade in the interior Country, are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a Copy of which is hereunto annexed,[1] and which will serve as a Guide in a variety of cases, in which it may be necessary to make provision by Law for that important Branch of the American Commerce.

33. The Fisheries on the Coast of Labrador, and the Islands adjacent thereto are objects of the greatest Importance, not only on account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength and Security of Our Kingdoms depend.

34. Justice and Equity demand, that the real and actual property and possession of the Canadian Subjects on that Coast should be preserved intirely; and that they should not be molested or hindered in the exercise of any Sedentary Fisheries they may have established there.

35. Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod Fishery is stated to be impracticable.

36. On all such parts of the Coast, where there are no Canadian Possessions, and more especially where a valuable Cod Fishery may be carried on, it will be your Duty to make the Interests of Our British Subjects going out to fish there in Ships fitted out from Great Britain the first object of your care, and, as far as circumstances will admit, to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third, "for the Encouragement of the New Foundland Fishery," and you are on no account to allow any possession to be taken, or Sedentary Fisheries to be established upon any parts of the Coast, that are not already private Property, by any persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37. We have mentioned to you the Fisheries upon the Coast of Labrador, as the main object of your attention; but the Commerce carried on with the Savages of that Coast, and the state and condition of those Savages deserve some regard; the Society of Unitas Fratrum, urged by a laudable Zeal for promoting Christianity, has already, under Our Protection, and with Our Permission, formed Establishments in the Northern parts of that Coast for the purposes of civilizing the Natives, and converting them to the Christian Religion. Their success has

[1] The plan is in Shortt and Doughty, (new ed.) pp. 614 ff.

been answerable to their Zeal; and it is Our express Will and Pleasure, that you do give them every countenance and Encouragement in your power and that you do not allow any Establishment to be made, but with their consent, within the limits of their possessions.

38. By Our Commission to you under Our Great Seal of Great Britain you are authorised and impowered, with the advice and consent of Our Council, to settle and agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements, and Hereditaments, as are now, or shall, hereafter be in Our Power to dispose of. It is therefore Our Will and Pleasure that all Lands, which now are, or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practised antecedent to the Conquest of the said Province; omitting however in any Grant, that shall be passed of such Lands, the Reservation of any Judicial Powers, or privileges whatever. And it is Our further Will and Pleasure that all Grants in Fief or Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, or Disallowance, and to a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief and Seigneurie under the French Government.

## XXXVI

## AN ORDINANCE FOR ESTABLISHING COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC[1]

[Trans.: Shortt and Doughty.]

February 25, 1777.

Whereas it is necessary to establish Courts of Civil Judicature for the speedy Administration of Justice within this Province; It is therefore Ordained and Enacted by His Excellency the Captain General, and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That,

Art. 1. For the Ease and Convenience of His Majesty's subjects residing in different Parts of this Province, the same shall be and hereby is divided into Two Districts, to be called and known by the names of Quebec and Montreal, which said Districts shall be divided and bounded by the River Godfroy on the South, and by the River St. Maurice on the North side of the River St. Lawrence.

Art. 2. A Court of Civil Jurisdiction, to be called the Court of Common Pleas, shall be, and hereby is erected, constituted, and established for each of the said Districts, the one whereof shall sit at the City of Quebec, and the other at the City of Montreal, at least one Day in every week, for the decision of Causes in which the Value of the matter in Dispute shall exceed Ten Pounds Sterling; and another Day in every week for the Decision of Causes in which the matter in Dispute shall be of or under the Value of Ten Pounds Sterling, and shall so continue their Sittings throughout the whole Year, excepting Three Weeks at Seed Time, a Month at Harvest, and a Fortnight at Christmas and Easter, and except during such Vacations as shall be appointed by the Judges for making their Circuits twice every Year through their separate Districts. The said Courts shall have full Powers, Jurisdiction, and Authority, to hear and determine all matters of Controversy relative to Property and Civil Rights, according to the Rules prescribed by an Act of Parliament made and passed in the Fourteenth Year of the Reign of His Present Majesty, intituled, "An Act for making more effectual "Provision for the Government of the Province of Quebec, in North America," and such Ordinances as may hereafter be passed by the Governor and Legislative Council of the said Province.

Art. 3. In matters above the Value of Ten Pounds Sterling, the Presence of Two Judges shall be necessary to constitute a Court of Common Pleas; the Decision of which Court shall be final in all cases where the matter in Dispute shall not exceed the Value of Ten Pounds Sterling, except in matters which may relate to taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or other such like matter or Thing, where the Rights in future may be bound, in which Cases, and also in all Matters that exceed the said Value of Ten Pounds Sterling, an Appeal shall lie to the Governor and

[1] This ordinance and the two following are the outcome of sections 14 and 15 of Carleton's instructions, 1775 (see No. XXXV).

Council; provided Security be duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation; as also pay such Costs and Damages as shall be awarded, in case the Judgement or Sentence of the Court of Common Pleas shall be affirmed.

Art. 4. The Governor and Council are hereby erected and constituted a Superior Court of Civil Jurisdiction (whereof in the absence of the Governor and Lieutenant the Chief Justice shall be President) for hearing and determining all Appeals from the inferior Courts of Civil Jurisdiction within the Province, in all cases where the matter in Dispute shall exceed the Sum of Ten Pounds Sterling, or shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office or Annual Rents, or other such like Matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than Ten Pounds Sterling. And any Five Members of the said Council (the Judges who shall have given the Judgment appealed from excepted) with the Governor, Lieutenant Governor, or Chief Justice, shall constitute a Court for that Purpose, which shall sit the first Monday in every Month throughout the year, and continue sitting each Month as long as the Business before it may require: And the said Court of Appeals shall have Power to revise and examine all the Proceedings in the Court below, and to correct all errors both in Fact and in Law, and to give such Judgment as the Court below ought to have given, and on Judgment to award and issue such Execution as the Law shall direct.

Art. 5. The Judgment of the said Court of Appeals shall be final in all cases where the matter in Dispute shall not exceed the Value of £500 Sterling; but in all cases exceeding that Value, an Appeal shall lie to His Majesty in His Privy Council, provided security be first duly given by the Appellant, that he will effectually prosecute his Appeal, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by His Majesty in His Privy Council, in case the Sentence of the said Court of Appeals shall be affirmed. An Appeal shall likewise lie to His Majesty in His Privy Council from the Judgment of the said Court of Appeals in all cases where the matter in Question shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or any such like matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than £500 Sterling; and in all cases where Appeal shall be allowed to His Majesty in His Privy Council, Execution shall be suspended until the final determination of such Appeal, provided Security be given as aforesaid.

Art. 6. All Judgments, Sentences and Executions of the Courts of Civil Jurisdiction, which it has been found necessary to establish since the 1st May, 1775, are hereby ratified and confirmed, subject nevertheless to an Appeal to the said Court of Appeals, in matters exceeding the value of Ten Pounds Sterling, and in cases where Rights in future may be bound.

Art. 7. Any Party meaning to Appeal from any Judgment, either of the said last-mentioned Courts, or of the Courts of Civil Jurisdiction subsisting in the Province before the 1st of May, 1775, shall sue out of the Writ of Appeal within Three Months after the Publication of this Ordinance, after which Period the same will not be allowed.

Art. 8. All Actions instituted in any of the Courts of Civil Jurisdiction subsisting in the province before the 1st of May, 1775, or in those established since the 1st of May, 1775, and remaining undetermined therein, shall be transmitted to the Courts of Common Pleas hereby established for the respective Districts, to be proceeded upon to Judgment, as if the same had been commenced therein; and also all Matters remaining undetermined in any Court of Appeals heretofore subsisting in this Province shall be forthwith transmitted to the Court of Appeals hereby established, to be proceeded upon therein to Judgment and Execution.

February 25, 1777.

GUY CARLETON.

## XXXVII

## AN ORDINANCE[1] TO REGULATE THE PROCEEDINGS IN THE COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC

[Trans.: Shortt and Doughty.]

February 25, 1777.

Whereas it is necessary for the Ease and Convenience of His Majesty's subjects who may have Actions to prosecute in the Courts of Civil Judicature established in this Province, that the mode of Administering Justice in the said Courts should be clearly ascertained, and rendered as plain as possible: It is therefore Ordained and Enacted by his Excellency the Captain General and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That,

Art. 1. In all cases or Matters of Property, exceeding the Sum or Value of £10 Sterling, upon a Declaration presented to any one of the Judges of the Court of Common Pleas, by any Person, setting forth the Grounds of his Complaint against a Defendant, and praying an Order to Compel him to appear and answer thereto, such Judge shall be, and hereby is empowered and required in his separate District to grant a Writ of Summons in the Language of the Defendant, issuing forth in His Majesty's Name, tested and signed by one of the Judges, and directed to the Sheriff of the District, to summon the Defendant to appear and answer the Plaintiffs Declaration on some certain future day, Regard being had to the Distance of the Defendant's Abode from the Place where the Court sits; but if the Judges, or any Two of them are satisfied, by the Affidavit of the Plaintiff, or otherwise, that the Defendant is indebted to him, and on the point of leaving the Province, whereby the Plaintiff might be deprived of his Remedy against him; it shall be lawful for the said Judges, or any Two of them, to grant an Attachment against the Body of such Defendant, and hold him to Bail, and for Want of Bail to commit him to Prison until the Determination of the Action against him: The Declaration shall in all cases accompany the Writ, and the Plaintiff shall not be permitted to amend it until the Defendant shall have answered the matter therein contained, nor afterwards, without paying such reasonable Costs as the Court may ascertain.

Art. 2. Copies both of the Writ of Summons, and the Declaration, shall be served on the Defendant personally, or left at his House with some grown Person there, otherwise the Service shall be deemed insufficient.

Art. 3. If on the Day of the Return of the Writ of Summons the Defendant does not appear in Person, or by Attorney (Proof of such Service being produced or made in Court) the Plaintiff shall obtain a Default against the Defendant, and if on calling over the Action in the next Weekly Court Day the Defendant should still neglect to appear, without any good Reason for such his Neglect, the Court after hearing and receiving sufficient Proof of the Plaintiff's Demand, shall cause their final Judgment to be entered against the Defendant, and shall award such Costs thereupon as they shall think reasonable, and issue such Execution as the Law, according to the nature of the case, may direct.

Art. 4. If Defendant appears at the Return of the Writ of Summons, or, having made Default on that Day, pays such Costs as the Court may think reasonable, and appears on the next Weekly Court Day after such Return, he shall, either then, or on such other Day as he may obtain from the Court, make his Answer to the Declaration, either in Writing or Verbally as he thinks fit, provided that if his Answer is Verbal the Clerk of the Court shall take down the substance thereof in writing, and preserve the same amongst the Records of the Court.

If the Plaintiff does not appear, or appearing does not prosecute his action, the same shall be dismissed with Costs.

Art. 5. If upon the Declaration and Answer, or such further Pleading as the Court may, if it thinks proper, permit or direct, the Parties shall appear to differ essentially in their State of Facts, the Court shall ascertain and order the Clerk

This ordinance was renewed, practically unchanged, every two years. In 1785 provision was made for trial by jury, and in 1787 the regulations were further expanded (Shortt and Doughty, *op. cit.*, pp. 780, 858).

to take down in Writing, such Facts, material to the Decision of the Cause as it will proceed to receive Proof upon, and appoint a Day for hearing such Proofs as the Parties shall think proper to produce.

Art. 6. In all Cases where Witnesses are produced they shall be examined and Cross Examined, viva voce, in open Court, unless some good Reason is shewn to the Judges for departing from this Rule in particular Cases. The Examinations of the Witnesses shall be taken down in Writing by the Clerk, and filed among the Records of the Court.

Art. 7. In the Proof of all Facts concerning Commercial Matters Recourse shall be had in all the Courts of Civil Jurisdiction in the Province, to the Rules of Evidence laid down by the English Laws.[1]

Art. 8. The Party meaning to Appeal from any Sentence or Judgment of any of the Courts of Common Pleas, shall sue out a Writ from the Court of Appeals, tested and signed by the Governor, Lieutenant Governor, or Chief Justice, stating that the Appellant complains of being aggrieved by the Judgment and therefore commanding the Judges of the Inferior Court, or any Two of them, to send up the Original Papers and Proceedings in the Cause, and Transcripts of all Rules, Orders and Proceedings found in the Records or Registers of the Court concerning the same; such Writ, when presented to any of the Judges of the Court below, shall be allowed by him, if the Appellant has given the requisite Security, and when allowed, the Clerk of the Court shall proceed to comply with the Order of the Writ, and the Judges, or any Two of them, shall make their Return against the Return Day thereof.

Art. 9. If the Appellant does not within Eight Days after the Return of the said Writ, and the Transmission of the proceedings, file his Reasons of Appeal, the Appellee shall obtain a Rule or Order, that unless the Appellant's Reasons of Appeal are filed in Four Days, the Appeal will be dismissed, and if the Reasons of Appeal are not filed within Four Days after Service of the said Rule on the Appellant or his Agent, the Appeal shall accordingly be dismissed with Costs.

Art. 10. Within Eight Days after the Reasons of Appeal are filed, the Appellee shall file his Answers thereto, or if he neglects so to do the Appellant shall obtain a Rule or Order, that unless the Appellee file his Answers within Four Days he will be precluded from filing them after that Period; and if his Answers are not filed within Four Days after Service of such Rule on the Appellee or his Agent, he shall accordingly be precluded from filing them, and the Court will proceed to hear the Cause on the part of the Appellant, and proceed to Judgment therein without the Intervention of the Appellee.

Art. 11. The said Court of Appeals nevertheless shall and may, upon Application made, and good Cause shewn by either of the Parties (Notice being given the other) prolong the Time allowed for filing either the Reasons of Appeal or Answers thereto, and in case the Court shall not be sitting, at the Time when such Reasons or Answers ought regularly to be filed, the Party neglecting shall apply to the Court, at the next sitting thereof, and shew his Reasons for such his Neglect: and if the Court finds them insufficient, it will, as the case may be, either dismiss the Appeal, or proceed to hear it without the Intervention of the Appellee, as above directed.

Art. 12. When the Reasons of Appeal, and Answers thereto, are filed, the Court shall on the Application of either of the Parties, fix on such convenient Day for the hearing of the Cause as to it may seem proper.

Art. 13. If the Writ of Appeal is not allowed by one of the Judges of the Court below, and a Copy thereof served on the Appellee or his Agent within Fifteen days after any Judgment given in the Court of Common Pleas, Execution shall issue, and no Appeal shall be allowed or received from the Court of Common Pleas after the Expiration of one Year from the Date of the Judgment of such Court.

Art. 14. The Execution sued out from any of the Courts of Civil Jurisdiction shall be a Writ issuing in the King's Name, tested and signed, when issuing from the Court of Appeals, either by the Governor, Lieutenant Governor, or Chief Justice, and when issuing from the Court of Common Pleas, by one of the Judges of the Court for the District in which it is given, directed to the Sheriff of the District, setting forth the Judgment of the Court between the Parties, and the kind of Execution which the Law, according as the case may be, shall direct, whether the same be to take the Body, or to levy a Sum of Money out of any

[1] Compare for this policy Carleton's instructions, 1775, Section 12 (No XXXV).

one's Goods and Chattels, Lands and Tenements, or to do any Special matter or Thing whatever; the Date of the Judgment shall be indorsed on every Writ of Execution, and that Indorsement signed by the Judge.

Art. 15. In all Cases where execution shall issue against Real and Personal Estates the Sheriff shall first dispose of the Personal Property, and if the Proceeds thereof fall short of the Amount of the Judgment the Real Estate or so much thereof, as will produce the Amount shall be sold for that purpose.

Art. 16. Where Moveables shall be seized by the Sheriff under an Execution, he shall cause the seizure to be published at the Church Door, of the Parish, immediately after Divine Service, on the first Sunday succeeding such Seizure, and at the same time cause to be proclaimed the Day and Place when and where he intends to proceed to the sale thereof, provided that the Place of Sale shall be in the same Parish in which the Seizure is made.

Art. 17. When Lands and Tenements shall be seized by the Sheriff under a Writ of Execution, he shall advertize the Sale thereof Three Several Times in the Quebec Gazette, to be on some certain Day after the expiration of Four Months from the Date of the First Advertisement, and proclaim the said Sale at the Church Door of the Parish in which the Premises are situated, immediately after Divine Service, on the Three Sundays next preceding the same and Cause a Copy of the said Advertisement to be fixed on the Door of the Parish Church.

Art. 18. If Two or more Writs of Execution shall be issued upon Judgments given the same Day against the same Defendant or Defendants, and so marked on the Writs, such Executions shall have the same Privilege and be satisfied in the same Proportions, and the Sheriff, or other Person to whom such Writs of Execution shall be Awarded, receiving the same, is hereby authorized and Commanded, after the sale of the whole of such Defendant's Real and Personal Estate, where the Writ shall be awarded against both, in case the same should not be sufficient to satisfy the whole of such Judgments, to pay over and divide the Nett Produce of such sale or Sales, after deducting his own Costs and Charges, amongst the several Plaintiffs, in Proportion to the Amount of their respective Judgments.

Art. 19. On every Execution the Sheriff shall be allowed all his Disbursements, and shall be authorized to charge over and above at the Rate of Two and an Half per centum, to be deducted out of the Money he Levies.

Art. 20. Proceedings in Actions under £10 Sterling. In Matters either not exceeding or under Ten Pounds Sterling, any Person having a Right of Action against another, shall prepare, or procure from the Clerk of the Court of Common Pleas, a Declaration . . . . .

* * * * * *

This Summons shall be signed by one of the Judges of the Court, and a Copy thereof, and of the Declaration, served on the Defendant Personally, or left at his Dwelling House, or Ordinary Place of Residence, with some grown Person there; and the Person serving the same shall inform the Defendant, or such grown Person, of the Contents thereof. If, at the Time mentioned in the Summons, the Defendant does not appear (Proof of the Service thereof being produced in Court) the Judges, or any one of Them shall hear the Cause on the part of the Plaintiff, and make such order, Decree, or Judgment, and award such reasonable Costs of Suit, as to them or him shall appear agreeable to Equity and good Conscience; but if the Defendant does not appear by himself, or his Agent, and the Plaintiff, or his Agent, does not appear, or appearing does not Prosecute, or prosecuting, fails in his Action, the Judge or Judges shall dismiss the Defendant with Costs. If the Plaintiff makes good his Charge against the Defendant, the Judge or Judges shall give Judgment accordingly, and award Costs and Execution, but the Execution shall not issue till the next Court Day after Judgment given: the Execution shall go against the moveables only of the Defendant, which shall be seized by some Person to be for that Purpose appointed by the Court, and sold by him in the manner mentioned in the Sixteenth Article of this Ordinance. But the Execution shall contain an Exception of the Party's Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and one Bed and Bedding, unless his other Goods and Chattels should prove insufficient, in which case such Beasts of the Plough, Implements of Husbandry and Tools of his Trade shall be sold, but not the Bed and Bedding. The judge or judges, may, if they think proper, order the Debt to be levied by Installments, provided the Time allowed shall not exceed the Space of Three Months from the Day of issuing the Execution.

Art. 21. In Matters, as well above as of or under the Value of Ten Pounds Sterling, if the Defendant shall convey away or secrete his Effects, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment.

Art. 22. For the Satisfaction of all Judgments given in Commercial Matters between Merchants, as well as of all Debts due to Merchants for Goods, Wares, and Merchandizes, by them sold, Execution shall issue not only against the Goods, Chattels, Lands and Tenements of the Defendant, but also, in case they shall not produce the Amount of the Plaintiff's Demand, against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgment, or otherwise settles with and satisfies the Plaintiff: Provided, that if the Defendant after remaining one Month in Prison, shall make Application to the Court, and make an Affidavit that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant the Sum of Three Shillings and Six pence weekly for his Maintenance as long as he shall be detained in Prison at the Suit of the Plaintiff; such Payment shall be made in Advance on Monday in every Week, in Failure of which the Court from whence the Execution issued shall order the Defendant to be released: but the Plaintiff shall not be obliged to make such Payment if he can prove, to the Satisfaction of the Court by which the Defendant stands committed, that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Art. 23. When any Person against whom Judgment shall be given in any of the Courts of Common Pleas shall not have sufficient Goods, Chattels, Lands or Tenements, to satisfy such Judgment within the Jurisdiction of the Court wherein such Judgment shall have been obtained, but shall have Goods, Chattels, Lands or Tenements within the Jurisdiction of the other Court of Common Pleas, it shall be lawful for the Judge or Judges of the Court wherein Judgment shall have been obtained to award Execution to the Sheriff of the other District, who, after getting the Writ indorsed by one of the Judges of the Court for the District in which the Goods, Chattels, Lands, or Tenements are situated, shall execute the same, and make return thereof to the Court from which it issued; and such Writ and Return shall be by him sent to the Sheriff of the District from whence the Writ was originally awarded, to be delivered into the Court that issued the same.—The Sheriff executing such Writ shall be answerable for his Doings relative thereto before the Court from which it was originally awarded; and the Judges of the Court of Common Pleas for the one District may, in like manner, award Execution against the Body of a Person residing in the other in Cases where such Execution is by Law allowed; and the Sheriff executing the Writ to him in such case directed shall convey the Body of such Person into the Prison of the District wherein such Person shall be arrested.

Art. 24. This Ordinance, and the several Provisions and matters therein contained, shall remain in Force only during the Space of Two Years from the Publication thereof.

GUY CARLETON.

February 25 ,1777.

## XXXVIII

## AN ORDINANCE[1] FOR ESTABLISHING COURTS OF CRIMINAL JURISDICTION IN THE PROVINCE OF QUEBEC

[Trans.: Shortt and Doughty.]

March 4, 1777.

It is ordained and Enacted by His Excellency the Captain General and Governor in Chief of this Province, by and with the advice and consent of the Legislative Council of the Same, That,

ART. I.

There shall be, and hereby is erected, constituted and established for the Province at large, a Supreme Court of Criminal Justice and Jurisdiction, to be called and known by the name of the Court of King's Bench, for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever; the said Court shall be held before the Chief Justice of the Province, or Commissioners that may be appointed for executing the Office of Chief Justice for the

[1] This ordinance was amended in details in 1787 (Shortt and Doughty, *op. cit.*, pp. 862 ff.).

Time being, who shall hear and determine the said Pleas of the Crown, and of all manner of Offences whatsoever, according to the Laws of England, and the Ordinances of the Government and Legislative Council of the Province.

And for the Speedy Administration of Justice, and the preventing long Imprisonments, there shall be held in every Year, Four Sessions of the said Court of King's Bench, whereof Two Sessions shall be held at the City of Quebec, and the other Two at the City of Montreal, at the Times hereafter following, to wit, at the City of Quebec on the First Tuesday of May and the First Tuesday of November, and at the City of Montreal on the First Monday of March and the First Monday of September in every year: but nothing herein contained shall extend to prevent the Governor, Lieutenant Governor, or Commander in Chief for the Time being, to issue Commissions of Oyer and Terminer and Gaol delivery at any other Time or Times, when he may think it necessary and expedient so to do.

ART. II.

In each of the Districts of Quebec and Montreal there shall be held and kept, Four Times in every Year, a Court of General Quarter Sessions of the Peace, by the Commissioners of Peace of each respective District, or so many of them as are or shall be limited in the Commission of the Peace, who shall hear and determine all matters relative to the Conservation of the Peace, and whatsoever is by them cognizable, according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

The said Sessions for the District of Quebec, shall be held at the City of Quebec, and the said Sessions for the District of Montreal shall be held at the City of Montreal, on the days hereafter following, to wit, on the second Tuesdays of the Months of January, April, July, and October, in every year.

And Two of the said Commissioners of the Peace shall sit weekly in Rotation, in the Cities of Quebec and Montreal, for the better Regulation of the Police, and other matters and Things belonging to their Office; and the names of the Commissioners who are to sit in each Week shall be posted up on the door of the Sessions House, by the Clerk of the Peace, Two Days before their respective Sittings.

ART. III.

As the great extent of this Province may render it often impracticable for the Coroner of the District to give his Attendance at the different Places where it might be necessary, the Captains of Militia shall be and hereby are impowered, in their respective Parishes, when any marks of Violence appear on any dead Body, to summon together Six respectable Householders of his Parish, to inspect the same; and he shall according to their Opinion, report the manner and cause of such Death in writing, to the nearest Commissioner of the Peace, that a further examination may be made therein, if necessary.

ART. IV.

And as great Inconveniences might arise from the want of Peace Officers in different parts of the Province, the said Captains of Militia shall be and hereby are impowered to arrest any Person guilty of any Breach of the Peace, or any Criminal Offence, within their respective Parishes, and to convey or cause to be conveyed, such Person before the nearest Commissioner of the Peace, to be dealt with according to Law.

March 4, 1777. (Signed) GUY CARLETON.

## XXXIX

## THE COLONIAL TAX REPEAL ACT,[1] 1778

(18 George III, c. 12.)

*An Act for removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain in any of the Colonies, Provinces, and Plantations in North America and the West Indies; and for repealing so much of an Act, made in the seventh year of the reign of his present Majesty, as imposes a duty on tea imported from Great Britain into any Colony or Plantation in America, or relates thereto.*

Preamble. Whereas taxation by the Parliament of Great Britain, for the purpose of raising a revenue in his Majesty's Colonies, Provinces, and Plantations in North America,

[1] This act is more particularly concerned with the American colonies. It is included here because the title may include Canada, though it is obvious that it did not repeal No. XXXII.

has been found by experience to occasion great uneasiness and disorders among his Majesty's faithful subjects, who may nevertheless be disposed to acknowledge the justice of contributing to the common defence of the Empire, provided such contribution should be raised under the authority of the General Court, or General Assembly, of each respective Colony, Province, or Plantation: And whereas, in order as well to remove the said uneasiness, and to quiet the minds of his Majesty's subjects who may be disposed to return to their allegiance, as to restore the peace and welfare of all his Majesty's Dominions, it is expedient to declare that the King and Parliament of Great Britain will not impose any duty, tax, or assessment, for the purpose of raising a revenue in any of the Colonies, Provinces, or Plantations: May it please your Majesty that it may be declared and enacted, and it is hereby declared and enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of his Majesty's Colonies, Provinces, and Plantations in North America or the West Indies; except only such duties as it may be expedient to impose for the regulation of commerce; the net produce of such duties to be always paid and applied to and for the use of the Colony, Province, or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts, or General Assemblies, of such Colonies, Provinces, or Plantations, are ordinarily paid and applied.

No tax to be hereafter imposed by the King and Parliament of Great Britain on any of the Colonies in North America or the West Indies; except etc.

II. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, so much of an Act made in the seventh year of his present Majesty's reign, intituled "An Act for granting certain duties in the British Colonies and Plantations in America; for allowing a drawback of the duties of Customs upon the exportation from this kingdom of coffee and cocoanuts of the produce of the said Colonies or Plantations; for discontinuing the drawbacks payable on China earthenware exported to America; and for more effectually preventing the clandestine running of goods in said Colonies or Plantations," as imposes a duty on tea imported from Great Britain into any Colony or Plantation in America, or has relation to the said duty, be, and the same is hereby repealed.

So much of an Act, 7 Geo. III as imposes a duty on tea imported from Great Britain into America repealed.

## XL

### HALDIMAND TO GERMAIN[1]

[Trans.: Shortt and Doughty.]

Quebec, 25th October, 1780.

My Lord,

. . . . . .

As it is my Duty, it has been my Business to inform myself of the State of the Country & I coincide with the Majority of the Legislative Council in Considering the Canadians as the People of the Country, and think that in making Laws and Regulations for the Administration of these Laws, Regard is to be paid to the Sentiments and Manner of thinking of 60,000 rather than 2,000—three fourths of whom are Traders & Cannot with propriety be Considered as Residents of the Province.—In this point of view the Quebec Act, was both just and Politic, tho' unfortunately for the British Empire, it was enacted Ten Years too late—It requires but Little Penetration to Discover that had the System of Government Sollicited by the Old Subjects been adopted in Canada, this Colony would in 1775 have become one of the United States of America. Whoever Considers the Number of Old Subjects who in that Year corresponded with and Joined the Rebels, of those who abandoned the defence of Quebec in virtue of Sir Guy Carleton's Proclamation in the fall of the same Year, & of the many others who are now the avowed well wishers of the Revolted Colonies, must feel this Truth however national or Religious Prejudices will not allow him to declare it.

. . . . . .

Your Lordships Most Obedient & Most humble Servant,

(Signed) Fred Haldimand.

[1] This letter throws contemporary light on the value of the Quebec act. Lord George Germain became colonial secretary in July, 1776.

## XLI

## TREATY OF PARIS, 1783

[Trans.: Shortt and Doughty.]

DEFINITIVE TREATY *of Peace and Friendship between His Britannic Majesty and the United States of America.—Signed at Paris, the 3rd of September,* 1783.

In the Name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the Most Serene and most Potent Prince, George the Third, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunenburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore: and to establish such a beneficial and satisfactory intercourse between the 2 Countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual Peace and Harmony; and having for this desirable end already laid the foundation of Peace and reconciliation, by the Provisional Articles signed at Paris, on the 30th of November, 1782, by the Commissioners empowered on each part; which Articles were agreed to be inserted in, and to constitute, the Treaty of Peace proposed to be concluded between the Crown of Great Britain and the said United States, but which Treaty was not to be concluded until terms of Peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such Treaty accordingly; and the Treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the Provisional Articles above-mentioned according to the tenor thereof, have constituted and appointed, that is to say:

His Britannic Majesty, on his part, David Hartley, Esq., Member of the Parliament of Great Britain; and the said United States, on their part, John Adams, Esq., late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and Chief Justice of the said State, and Minister Plenipotentiary of the said United States to Their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, Esq., late Delegate in Congress from the State of Pennsylvania, President of the Convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, Esq., late President of Congress and Chief Justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and the signing the present Definitive Treaty: who, after having reciprocally communicated their respective Full Powers, have agreed upon and confirmed the following Articles:

Art. I. His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, Sovereign and Independent States; that he treats with them as such and for himself, his Heirs and Successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

II. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, viz., from the North-west Angle of Nova Scotia, viz., that Angle which is formed by a line drawn due North, from the source of the St. Croix River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the North-westernmost head of Connecticut River; thence down along the middle of that River to the 45th degree of North Latitude; from thence by a line due West on said latitude until it strikes the River Iroquois or Cataraquy [1]; thence along the middle

[1] The older names for that part of the St. Lawrence between lake Ontario and the mouth of the Ottawa river.

of the said River into Lake Ontario; through the middle of the said Lake until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication into Lake Erie: through the middle of said Lake until it arrives at the water-communication between that Lake and Lake Huron; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said Lake to the water-communication between that Lake and Lake Superior; thence through Lake Superior, Northward of the Isles Royal and Phelipeaux, to the Long Lake [1]; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said Lake to the most North-western point thereof, and from thence on a due West course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the Norther-most part of the 31st degree of North latitude: South by a line to be drawn due East from the determination of the line last mentioned, in the latitude of 31 degrees North of the Equator, to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean: East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source; and from its source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence: comprehending all Islands within 20 leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such Islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.

III. It is agreed, that the People of the United States shall continue to enjoy unmolested the right to take Fish of every kind on the Grand Bank and on all the other Banks of Newfoundland; also in the Gulph of St. Lawrence, and at all other places in the Sea, where the Inhabitants of both Countries used at any time heretofore to fish. And also that the Inhabitants of the United States shall have liberty to take fish of every kind on such part of the Coast of Newfoundland as British Fishermen shall use, (but not to dry or cure the same on that Island,) and also on the Coasts, Bays, and Creeks of all other of His Britannic Majesty's Dominions in America; and that the American Fishermen shall have liberty to dry and cure fish in any of the unsettled Bays, Harbours, and Creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such Settlement, without a previous agreement for that purpose with the Inhabitants, Proprietors, or Possessors of the Ground.[2]

IV. It is agreed that Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bonâ fide* debts heretofore contracted.

V. It is agreed that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British Subjects: and also of the estates, rights, and properties of Persons resident in Districts in the possession of His Majesty's arms, and who have not borne arms against The said United States: and that Persons of any other description shall have free liberty to go to any part or parts of any of the 13 United States, and therein to remain 12 months unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States, a reconsideration and revision of all Acts or Laws regarding the premises, so as to render the said Laws or Acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of Peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights and properties of such last-mentioned

[1] i.e. Rainy lake.

[2] On the northern boundaries and the fisheries, see Winsor, *Narrative and Critical History*, vii pp. 170 ff.

Persons shall be restored to them, they refunding to any Persons who may be now in possession the *bonâ fide* price (where any has been given) which such Persons may have paid on purchasing any of the said lands, rights, or properties since the confiscation.

And it is agreed that all Persons who have any interest in confiscated lands, either debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.[1]

VI. That there shall be no future confiscations made, nor any prosecutions commenced against any Person or Persons, for or by reason of the part which he or they may have taken in the present War; and that no Person shall on that account suffer any future loss or damage either in his person, liberty, or property; and that those who may be in confinement on such charges at the time of the Ratification of the Treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

VII. There shall be a firm and perpetual Peace between His Britannic Majesty and the said States, and between the Subjects of the one and the Citizens of the other, wherefore all hostilities both by sea and land shall from henceforth cease: all Prisoners on both sides shall be set at liberty, and His Britannic Majesty shall with all convenient speed, and without causing any destruction, or carrying away any Negroes or other property of the American Inhabitants, withdraw all his Armies, Garrisons, and Fleets from the said United States, and from every Port, Place, and Harbour within the same; leaving in all Fortifications the American Artillery that may be therein: and shall also order and cause all Archives, Records, Deeds, and Papers belonging to any of the said States, or their Citizens, which in the course of the War may have fallen into the hands of his Officers to be forthwith restored and delivered to the proper States and Persons to whom they belong.

VIII. The navigation of the River Mississippi, from its source to the Ocean, shall for ever remain free and open to the Subjects of Great Britain, and the Citizens of the United States.

IX. In case it should so happen that any Place or Territory belonging to Great Britain, or to The United States, should have been conquered by the arms of either, from the other, before the arrival of the said Provisional Articles in America, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

X. The solemn Ratifications of the present Treaty, expedited in good and due form, shall be exchanged between the contracting Parties in the space of 6 months, or sooner if possible, to be computed from the day of the signature of the present Treaty.

In witness whereof, we, the Undersigned, their Ministers Plenipotentiary, have in their name, and in virtue of our Full Powers, signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this 3d day of September, in the year of our Lord, 1783.

D. Hartley.
John Adams.
B. Franklin.
John Jay.

## XLII

## HALDIMAND TO NORTH[2]

[Trans.: Shortt and Doughty.]

Quebec, 6th November, 1783.

My Lord,

. . . . . .

Your Lordship has already been made acquainted with the general State of this Country, I am told that in the Petition[3] which Some of His Majesty's Antient Subjects have prepared to be presented to Parliament, they lay great Stress upon the Number of Loyalists who are to Settle in the Province, as an Argument in favor of the Repeal of the Quebec Act and for Granting a House of Assembly, but I have great Reason to believe these unfortunate People have suffered too

[1] On matters arising out of clauses iv and v, see *American State Papers, Foreign Relations*, i, pp. 188 ff.
[2] Lord North was one of the secretaries of state from April to December, 1783.
[3] For this petition in its final form, see No. XLIII.

Much by Committees and Houses of Assembly, to have retained any prepossession in favor of that Mode of Government, and that they have no Reluctance to Live under the Constitution established by Law for this Country. At the Meeting of the Legislative Council I intend to propose and recommend the Passing an Ordinance for the Introduction of the Habeas Corpus Act or Some other Mode for the personal Security, which will put the Liberty of the Subject in that Respect upon the Same footing as in England, and which will remove one of the ill grounded Objections to the Quebec Act, for tho' that Law had never been introduced into the Province, people were taught to believe that the Quebec Act had deprived the Inhabitants of the benefit of it.—

I have the Honor to be with the greatest Respect and Esteem,
My Lord, Your Lordship's Most Obedient, and Most Humble Servant,

FRED: HALDIMAND.[1]

## XLIII

## PETITION FOR HOUSE OF ASSEMBLY, 24 NOVEMBER, 1784 TO THE KING'S MOST EXCELLENT MAJESTY

[Trans.: Shortt and Doughty.]

The humble Petition of Your Majesty's Ancient and New Subjects; Inhabitants of the Province of Quebec.

MAY IT PLEASE YOUR MAJESTY.

AFTER the Conquest of the Province of Canada by the Arms of Great Britain, Your Petitioners in compliance with Your Majesty's gracious and royal Proclamation, bearing date the 7th day of October, 1763, Settled and became established, in the New acquired Colony of Quebec; in the full reliance on the faith of the Crown of Great Britain, as expressed in that Proclamation, for the enjoyment of those Laws, that Freedom and Security in Canada, which the Principles of the English Constitution afforded, in every part of the British Dominions in America. YOUR PETITIONERS and the Inhabitants of the Province, have chearfully on every occasion, obeyed the Controuling power of the Parliament of Great Britain, and with patience have suffered, during a period of Anarchy and War, rather than wound Your Majesty's feelings, or embarrass the Throne with Remonstrances and Petitions, at a time when the safety of the Nation, made sacred every moment of Public deliberation. The Actions and Conduct of Your Petitioners when truly represented, will best express to Your Majesty, the Sincerity of their Loyalty and Attachment to the Crown and Government of Great Britain.

YOUR PETITIONERS look with Concern on the burthen of Great Britain, and with great Pain and Commiseration they see the distresses of Your Majesty's loyal Subjects, who, driven from their Estates, Wealth, and Possessions are daily taking Shelter in this British Colony; though their unsettled and distressed Situation, may for the present hinder them from bringing forward their Petitions and their Claims; Your Majesty will readily perceive that a Government similar or Superior, to that under which they were born, had lived, and were happy, must be considered by those Your Majesty's unfortunate Subjects as an Affectionate proof of Your Majesty's Paternal Care and Regard for them; and the first Comfort which Your Majesty in relief to their Distresses can now grant: And the more so, as it will be a Blessing not merely granted to them, but extended to their Children and Posterity. YOUR PETITIONERS fully persuaded that the Welfare and Happiness of Your Majesty's Subjects, are objects of Your Majesty's serious and benign Consideration—beg leave to lay their Petition at the foot of the Throne and ardently to request Your Majesty's Interposition for the Repeal of the Quebec Bill; allowing such Priviledges as are already granted to the Roman Catholick Religion; as being inadequate to the Government of this extensive Province; the Cause of much Confusion in our Laws, and fraught with trouble and uneasiness to Your Majesty's loyal Subjects here. And that Your Majesty will be pleased to Concur in establishing your affectionate Subjects of this Province, in the full Enjoyment, of their civil Rights as British Subjects; and in granting them a Free, Elective House of Assembly. In these hopes they

[1] For Haldimand and the laws of Canada, see *Canadian Historical Review*, i, pp. 166 ff.

humbly presume to Suggest, that Clauses of the following Import, may be inserted in the Act of Parliament, which shall be made to Confirm a free Constitution of this Country.

1st. THAT the House of Representatives or Assembly,—be chosen by the Parishes, Towns and Districts of the Province, to be Composed of Your Majesty's Old and New Subjects, in such manner as to Your Majesty's Wisdom may seem most proper, that the Assembly be triennial, and the Members elected every three Years.

2d. THAT the Council consist of not less than Thirty Members and in case of Division on any measure before them, that no Act shall be passed, unless at least Twelve Members agree to carry the Vote. That the appointment of the Members, may be during their residence in the Province, and for Life; yet subject to temporary leave of Absence, as mentioned in the 11th Article; And that they serve as Councellors, without Fee or Reward.

3d. THAT the Criminal Laws of England be continued, as at present established by the Quebec Act.

4th. THAT the ancient Laws and Customs of this Country, respecting landed Estates, Marriage Settlements, Inheritances and Dowers, be continued; yet subject to be altered by the Legislature of Quebec; And that Owners may alienate by Will, as provided by the 10th Section of the Quebec Bill.

5th. THAT the Commercial Laws of England, be declared to be the Laws of this Province, in all Matters of Trade and Commerce, subject to be Changed by the Legislature of Quebec, as in the preceeding Article.

6th. THAT the Habeas Corpus Act, the 31st Charles 2d be made part of the Constitution of this Country.

7th. THAT Optional Juries be granted, on all Trials in Courts of Original Jurisdiction. That they be regularly Baloted for, and a Pannel formed as in England; either in the Case of an ordinary or a Special Jury, at the option of the Party applying for the same, And that Nine Members out of the Twelve, may in Civil Causes, be sufficient to Return Verdicts, subject to be Modified by the Legislature of Quebec, as in the 4th Article.

8th. THAT the Sheriffs be elected by the House of Assembly, and approved and Commissioned by the Governor, at the Annual Meeting of the Legislature. That they hold their Appointment during the period elected for, and their good Behaviour; and that they find reasonable Security, for a faithful discharge of their Duty.

9th. THAT no Officer of the Civil Government, Judge or Minister of Justice, be suspended by the Governor or Commander in Chief for the time; from the Honours, Duties, Salaries or Emoluments, of his Appointment; but with the advice and Consent of Your Majesty's Council, for the Affairs of the Province; which Suspension shall not Continue, after the Annual Sitting of the Council; unless it be approved by the same. The cause of Complaint if approved, to be thereafter reported to Your Majesty, for Hearing and Judgment thereon.

10th. THAT no New Office be Created, by the Governor or Commander in Chief for the time; but with the Advice and Consent of Your Majesty's said Council and be approved at their Annual Meeting, as in the preceeding Article.

11th. THAT all Offices of Trust be executed, by the Principal in the Appointment; unless by leave of Absence from the Governor, with advice and Consent of his Council; which leave of Absence, shall not extend to more than Twelve Months, or be renewed by the Governor, but with the Approbation of the Council, at the Annual Session.

12th. THAT Judges be appointed to preside in the Courts of the Province; to hold their places during Life, or their good Behaviour, and that they be rewarded with Sufficient Salaries, so as to confine them to the functions of administering Justice. That every Cause of Accusation for a Removal, proceeding from the Governor, shall follow the Rule laid down in the 9th Article. And every Cause of Accusation for a Removal, on the part of the Public, shall proceed from the House of Assembly, and be heard by the Council; which, if well founded, shall operate a Suspension; and in either Case, be decided in Appeal and Report to Your Majesty.

13th. THAT Appeals from the Courts of Justice in this Province to the Crown, be made to a Board of Council, or Court of Appeals, composed of the Right Honble The Lord Chancellor and the Judges of the Courts of Westminster Hall.

14th. YOUR PETITIONERS beg leave, humbly to Represent to Your

Majesty; that from their Proximity to the United States, who from Situation and Climate, have many advantages over them, the Internal Regulations for promoting the Trade, Agriculture and Commerce, of this Province are now become more intricate and difficult; and will require great Care and Attention, on the part of the Legislature here; to watch over the Interests of this Country. They therefore request, that the Assembly may have the Power, of laying the Taxes and Duties, necessary for defraying the Expences of the Civil Government of the Province. And for that purpose, that the Laws now existing, laying Taxes and Duties to be levied in the Province, may be repealed.

SUCH MAY IT PLEASE YOUR MAJESTY are the Intreaties and Prayers of Your loyal Subjects; and in full Confidence they trust, that Your Majesty will relieve them from the Anarchy and Confusion, which at present prevail, in the Laws and Courts of Justice of the Province, by which, their Real Property is rendered insecure, Trade is clogged, and that good Faith, which ought, and would subsist among the People, and which is the Life and Support of Commerce, is totally destroyed. And be Graciously pleased to Secure to them, a Constitution and Government, on such fixed, and liberal Principles, as may promote the desire Your Affectionate Subjects of this Province have, of rendering this Mutilated Colony, a bright Gem in the Imperial Crown of Great Britain. And that may call on the present Generation, for their unceasing Acknowledgements and Gratitude. And upon the future, to feel as the present, that the Security and Happiness of the People and Province of Quebec; depend on an Union with, and Submission to, the Crown and Government of Great Britain.

In these pleasing hopes Your Petitioners as in Duty bound will ever pray, &c. &c. &c.

Quebec, 24th November, 1784.

(Signed by five hundred and one names.)

## XLIV

## PLAN FOR A HOUSE OF ASSEMBLY [1]

[Trans.: Shortt and Doughty.]

We conceive that the House of Assembly ought for the present, to consist of a Number not exceeding 70 Representatives, who ought all to profess the Christian Religion, And Speak and write the English or french languages.

That, to procure that Number, the city of Quebec (being the Capital) and Parish, and the City of Montreal and Parish, between them, elect 13, Members. The city of three Rivers 2, Members. And as there are in the province 120 parishes, that they be divided into counties and districts according to the Number of Inhabitants, in such manner as each County or district may elect two or four Members.

That the Legislature have the power, on application to them, to erect such parishes as may in future be settled, into Counties or districts, to elect and Send Members to the Assembly, as the province increases in population.

That the qualification necessary to have a Vote at the Election of the representatives for the Cities shall be, a House, Shed or lot of Ground of the Value of forty Pounds Sterling; And, for the Counties or districts, a real Estate, Estate of Inheritance or *Terre en roture*, of at least, one and a half Acres in front by 20 Acres in Depth, or other Estate of higher denomination, And of which the Voter shall have the absolute property, lying within the district or County, or City and parish he votes for.

That the qualification necessary for a person offering himself to serve as a representative shall be a real Estate of Inheritance or descent in Lands or Houses of the Value of thirty Pounds Sterling yearly Rent.—

That every person shall prove by Oath, (under the pains and penalties of

[1] Adam Lymburner, who represented in London those who signed the petition of November 24, 1784 (No. XLIII), informed Grenville by letter on July 24, 1789, that a committee of the memorialists had drawn up a plan for a house of assembly, which he enclosed and possibly endorsed, as follows:—

'When this plan was made out in the fall of 1784, the loyalists had not begun their new Settlements. As these new Settlements have been divided, and erected into five new districts, it may be proper that each district send a certain number of Representatives. And that the two districts of Quebec and Montreal, containing the old settled part of the Country, be divided into a certain number of districts (for the purpose of electing Representatives only) to choose Members for the House of Assembly.'

perjury) his qualification to either Vote or represent, being of the age of twenty one years, And be absolute proprietor of the qualification.

That none but Males shall either Vote or represent.

That the Assembly have free liberty of debate, And the power of chusing a speaker.

That all laws relating to taxation or raising monies on the Subject, originate in the House of Assembly.

That the Assembly have the sole right to try and decide in all contested Elections.

That all affairs be carryed in the Assembly by a Majority of Votes.

That at every Meeting of the Assembly, the Speaker, And, at least one half of the representatives be necessary to form a house.—

That the Governor or Lieutenant Governor for the time being, shall be obliged to call together the representatives in assembly, once every year, between the first of January and the first of May of every year, And, at any other time the Urgency of Affairs may require.—

*Endorsed*: Plan for a House of Assembly drawn up by the Committee's of Quebec and Montreal, in November 1784.

In Mr. Lymburner's, 24th July, 1789.

## XLV

## OBJECTIONS TO THE REQUESTS MADE TO OUR AUGUST SOVEREIGN, DECEMBER, 1784 [1]

[Trans.: Shortt and Doughty.]

In the Address read at an Assembly held at the house of the R.R.P.P. Recolets, the 30th of November, 1784.

*That*, considering the burden of Great Britain, a House of Assembly should be granted us, to impose Taxes, &c.

That we ought certainly to view with sorrow the burden of our Mother Country; but alas! it can only be a fruitless sorrow, for what remedy can we offer? We, whose wants increase day by day; we, who, every year despoil ourselves of our last farthing to pay for the supplies, which this Mother Country is compelled to furnish us, and which are already exhausted; we, who in spite of the enormous sums, which in consequence of the war have been left in this country, are still in arrears with the parent state, for the balance of a considerable sum. What then are the resources on which taxes could be levied? Is it on the Towns? Who does not know the poverty of their Citizens. Is it on the Lands? Who does not know that the rural districts are in debt to the Towns, and have at present nothing with which to liquidate; that misery is the lot of a very large portion of their Inhabitants? What will be the result then, if a portion of their labours must be applied to the support of the State?

This representation, which is true in every point, ought to be convincing evidence that a House of Assembly for the imposition of Taxes is not only useless, but would be prejudicial to the interests of this Colony.

That the Chamber be indifferently composed of the ancient and new Subjects, &c.

This article requires more explanation: for, from this word *indifferently* there might be as many and even more ancient than new Subjects in the House, which would be contrary to natural right, as there are twenty Canadians to one ancient Subject. What would become of our rights if they were entrusted to Strangers to our Laws?

That the Council be composed of thirty members without salaries, &c.

This might be satisfactory if there were enough disinterested rich men to take the part of the people, the honest poor man being unable to give his time for nothing.

That the Criminal Laws of England be continued here.

That the leniency of these laws would make their continuation desirable; but the demand is unnecessary, since they are in force.

[1] This is a translation of a reply drawn up on behalf of the French Canadians to the petition of November 24, 1784 (No. XLIII). Although printed in December 1784, it was not sent officially to England till January 1789, when Dorchester forwarded it in a dispatch to Sydney.

That the Laws, Usages and Customs of this Country be continued; subject nevertheless, to those changes that the Legislation may find necessary, &c.

This article is contradictory; in that it affirms our Rights, and completely destroys them. For as a matter of fact, is it not destroying them to subject them to any alterations which the Legislation may find it necessary to make? Would they not become arbitrary? What statutes could be based on Rights as changeable as the House to which they will be submitted?

That the Commercial Laws of England be declared those of this Province, subject to the same alterations as in Article IV, &c.

That the reply to article IV will serve for this article.

That the Act of *Habeas Corpus* shall be in force, &c.

That our August Sovereign having granted it to us, it is unnecessary to trouble him further concerning it.

That in the Courts of Jurisdiction, Juries may be granted at the request of the Parties concerned.

That this article is entirely in favour of the Rich against the Poor. If they are the ordinary Juries; Ye poor men, what will become of your families, when you are forced to leave your work, for a part of the year, to go and decide causes which in no way concern you? You already complain at being compelled to interrupt your work when you are summoned for Criminal Affairs, which occurs six times in the year. What would be the result if you were obliged to take part in every sitting? Some one perhaps will say that this is done in London, and it can therefore be done in this country. But let such a one compare the number of citizens in London, amounting to about three hundred thousand men, with twelve hundred which, at the most is all that you are in this town and its suburbs. He will then see that you would be obliged to be present at the sittings, two hundred and fifty times for every time that a citizen of London need appear. Judge from this if you have any other trade to carry on, what would become of your families.

If the Juries are special ones (and in consequence remunerated) what poor man is there who could contend against a rich oppressor who has unjustly seized his property; and who, to crush him, may demand a Jury (which could not be refused him) would not this force the poor man to the alternative of giving up his cause, or being totally ruined if he loses. Complaints are now being made of the expense which Justice entails. Who will be able to afford it, when the payment of twelve Jurors is to be added? Would not this close the door of the Sanctuary of Justice to the poor?

That the Sheriffs shall be elected by the House, approved and commissioned by the Governor, &c.

That if the Sheriff nominated by the House does not please the Governor, what will become of the administration of the Laws of Justice? Will not a time of anarchy in consequence ensue, prejudicial to the public interests.

That no civil Officer shall be suspended from his office by the Governor without the consent of the Council, &c.

That no new civil Office shall be created by the Governor without the consent of the Council, &c.

That all positions of trust shall be filled by the persons themselves, &c.

That the three preceding articles would be admissible, time and place considered.

That Judges shall be appointed for the Courts of the Province, and that they shall have fixed and sufficient stipends.

That it is right to have Judges to administer Justice, and that they ought to have stipends sufficient to live suitably to their station. For, without that, they will either neglect the duties of their office, to occupy themselves with the care of their own interests, or they will put Justice up to auction.

That appeals from the Courts of Justice of this Province be made to the Lord Chancellor, at the Court of Westminster Hall.

That up to the present time we have made appeals to the King and his Council, who have taken our Laws as the guide of their decisions. But what will become of our Rights when brought before a Court which will deviate in nothing from the British Laws & Constitution? And further if the Council of the Province changes your laws, and replaces them by the laws of England, in what confusion and difficulty shall we not be placed? If, on the contrary, they are allowed to remain in force what means of Appeal shall we have in a Court which entirely ignores them.

That it may Please His Majesty in the interests of Commerce, and for the encouragement of Agriculture to invest the House of Assembly with power to impose Taxes, &c.

That this article duly considered would give rise to many reflections. For what community is there between our requirements & the proximity, the climate, and the situation of the United States which give them the advantage in Trade over us? Would the imposition of Taxes add three months to our summer, and make our river navigable for the whole year? No: then the advantage would still be on our neighbours' side. Would Taxes make our Agriculture flourish? No: for the Seigniors to encourage Agriculture give the lands for three years, exempt from all dues, and the lands often lie uncultivated for lack of means to work them.

What is it then that compensates for the advantages they possess over us? It is the peace that our rural districts have hitherto enjoyed; free from Taxation, and in spite of the severity of the climate, they have seen the fruit of their labours, and have enjoyed it. To this it may be urged that the rural districts are harassed by the billeting of Troops and by corvées. This is true, but would the imposition of Taxes exempt them from this burden. Let us see.

When the King considers it necessary to send Troops into this Colony for the safety of our possessions, would any one oppose it? No, this is a right which the King possesses in all his Dominions, without even being obliged to give account of his action. Have we Barracks in a condition for housing these Troops? No: can they live the whole year under canvas? no; then we must either construct Barracks, or lodge them.

Troops bring with them a considerable amount of ammunition, provisions, &c. Who is to transport these goods to their destination? willing men, it will be said, who will be well paid. You can get willing men, it is true, but at a rate so exorbitant that the Province would not have enough to pay for this one branch of defence. If you impose taxes upon them, you will no longer find them. So then, not to put a stop to works so indispensable, it will be necessary to commandeer; and in consequence we must have recourse to Corvées.

But someone will perhaps say as has already been said, that what are called Volunteers will be raised in the country. Here then would be a band of *Freemen* condemned to *Slavery*. Is it not enough for fortune to have treated them so unkindly, without increasing their misery by slavery. This being inadmissible, taking everything into consideration it appears conclusive after mature deliberation that Taxation cannot exempt us from the billeting of Troops, or from corvées; and that consequently an Assembly for the imposing of Taxes would be contrary to the interests of this impoverished Colony.

End.

I certify that during the Course of the month of December of the year 1784, I have printed about two hundred copies of the Objections and about the same number of an Address to His Majesty in opposition to the House of Assembly, (in the same space of time) Montreal, 29th December, 1788.

fl. Mesplet, printer.

## XLVI

## INSTRUCTIONS TO LORD DORCHESTER, 1786 [1]

[Trans.: Shortt and Doughty.]

Instructions to Our Right Trusty and Welbeloved Guy Lord Dorchester, Knight of the Most Honourable Order of the Bath—Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon—Given at Our Court at St. James's the 23d Day of August, 1786. In the Twenty Sixth year of Our Reign.

. . . . . .

12. . . . The Establishment of Courts and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province according to the Principles declared in the said Act for making more effectual provision for the Government thereof demand the greatest Care and Circumspection, for as on the one Hand it is Our gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have

[1] In 1786 Carleton was raised to the peerage as baron Dorchester, on his reappointment as governor.

the Benefit and Use of their own Laws, Usages and Customs in all Controversies respecting Titles of Land, and the Tenure, Descent, Alienation, Incumbrances and Settlements of real Estates and the Distribution of personal property of Persons dying intestate, so on the other hand it will be the Duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the Decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts and Agreements, whether of a Mercantile or other Nature, and also of Wrongs proper to be compensated in Damages, and more especially where Our Natural born Subjects of Great Britain, Ireland, or other Plantations residing at Quebec, or who may resort thither or have Credit or Property within the same, may happen to be either Plaintiff or Defendant in any Civil Suit of such a Nature.

. . . . . .

14. . . . Whereas, in pursuance of Our former Instructions to Our Governors and Commanders in Chief, Courts of Justice have been established within Our province of Quebec, It is Our Will and Pleasure that you do take due care that in all Cases whatever the Powers and Authorities granted by Us, or by any Ordinance confirmed by Us, to the said several Courts be duly observed and enforced, and that the Proceedings therein be in all things conformable to the said Act of Parliament "for making more effectual provision for the Government of the Province of Quebec," and to such Ordinances as may have been or hereafter may be enacted by the Legislature for those purposes; And that the Governor and Council (of which in the Absence of the Governor and Lieutenant Governor the Chief Justice is to be President) shall continue to be a Court of Civil Jurisdiction for the hearing and determining of all Appeals from the Judgment of the other Courts, where the Matter in dispute is above the Value of ten Pounds; That any five of the said Council (if no more shall upon Summons be present) with the Governor, Lieutenant Governor or Chief Justice shall constitute a Court for that purpose, and that their Judgment shall be final in all Cases not exceeding the Value of five hundred Pounds Sterling; In which Cases an Appeal from their Judgment is to be admitted to Us in Our Privy Council; It is however Our Will and Pleasure that no Appeal be Allowed unless Security be first duly given by the Appellant that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by Us, in case the Sentence be affirmed; Provided nevertheless, where the Matter in Question relates to the taking or demanding of any Duty payable to Us, or to any Fee of Office, or Annual Rents or other such like Matter or Thing, where the Right in future may be bound, in all such Cases Appeal to Us in Our Privy Council is to be admitted, though the immediate Sum or Value appealed for be of less Value; and it is Our further Will and Pleasure that in all Cases where Appeals are admitted unto Us in Our Privy Council Execution be suspended until the final Determination of such Appeal, Unless good and sufficient Security be given by the Appellee to make ample restitution of all that the Appellant shall have lost by means of such Decree or Judgment, in case upon the Determination of such Appeal such Decree or Judgment should be reserved, and restitution awarded to the Appellant: Appeals unto Us in Our Privy Council are also to be admitted in all Cases of Fines imposed for Mis-demeanours, Provided the Fines so imposed amount to or exceed the Sum of One hundred Pounds Sterling, the Appellant first giving good Security that he will effectually prosecute the same, & answer the Condemnation, if the Sentence by which such Fine was imposed in Quebec be affirmed.

. . . . . .

16. . . . It is Our Will and Pleasure that all Commissions, to be granted by you to any person or persons to be Judges or Justices of the Peace or other necessary Officers, be granted during Pleasure only.

. . . . . .

39. . . . By Our Commission to you under Our Great Seal of Great Britain you are authorized & impowered with the Advice and Consent of Our Council to settle and agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements and Hereditaments as now are or shall hereafter be in Our Power to dispose of. It is therefore Our Will and Pleasure that all Lands, which now are or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practised antecedent to the Conquest of the

said Province, omitting however in any Grant that shall be passed of such Lands the reservation of any judicial Powers or Privileges whatever; And It is Our further Will and Pleasure that all Grants in Fief or Seigneurie, so to be passed by you as aforesaid, be made subject to Our Royal ratification or Disallowance and a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief or Seigneurie under the French Government.

40. . . . Whereas many of Our Loyal Subjects, Inhabitants of the Colonies and Provinces now the United States of America, are desirous of retaining their Allegiance to Us and of living in Our Dominions, and for this purpose are disposed to take up and improve Lands in Our Province of Quebec, And We being desirous to encourage Our said Loyal Subjects in such their Intentions and to testify Our Approbation of their Loyalty to Us and Obedience to Our Government by allotting Lands for them in Our said Province, and Whereas We are also desirous of testifying Our Approbation of the Bravery and Loyalty of our Forces serving in Our said Province, and who may have been reduced there, by allowing a certain Quantity of Land to such of the Non-Commissioned Officers and Private Men of our said Forces who are inclined to become Settlers therein, It is Our Will and Pleasure that immediately after you shall receive these Our Instructions you do direct Our Surveyor General of Lands for Our said Province of Quebec to admeasure and lay out such a Quantity of Land as you, with the Advice of Our Council, shall deem necessary, and convenient for the settlement of Our said Loyal Subjects, and the Non-Commissioned Officers and Private Men of Our Forces which may have been reduced in Our said province, who shall be desirous of becoming Settlers therein; Such Lands to be divided into distinct Seigneuries or Fiefs to extend from two to four Leagues in front and from three to five Leagues in Depth if situated upon a navigable River, otherwise to be run square or in such shape and in such Quantities as shall be convenient and practicable, and in each Seigneurie a Glebe to be reserved & laid out in the most convenient Spot, to contain not less than 300, nor more than 500 Acres; The Property of which Seigneuries or Fiefs shall be and remain vested in Us, Our Heirs & Successor, And you shall allot such Parts of the same as shall be applied for by any of Our said Loyal Subjects, Non-Commissioned Officers and Private Men of Our Forces reduced as aforesaid, in the following Proportions, that is to say,

To every Master of a Family One Hundred Acres and fifty Acres for each Person of which his Family shall consist;

To every single Man fifty Acres;

To every Non-Commissioned Officer of Our Forces reduced in Quebec Two Hundred Acres;

To every private Man reduced as aforesaid One Hundred Acres,

And for every Person in their Families fifty Acres.

The said Lands to be held under Us, Our Heirs and Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same Terms, Acknowledgements & Services as Lands are held in Our said Province under the respective Seigneurs holding and possessing Seigneuries or Fiefs therein, and reserving to Us, Our Heirs and Successors from and after the expiration of Ten Years from the admission of the respective Tenants a Quit Rent of one half penny per Acre.

41. . . . And whereas upon the raising and establishing the Corps late the 84th Regiment of Foot, We did promise and declare that the Officers and Privates of the said Corps should when reduced be intitled to and receive Grants for certain allotments of Lands in proportion to their respective Ranks therein, It is Our Will and Pleasure that you do in manner as herein before directed Grant Warrants of Allotment and Survey to such of the Officers and privates of the said late Eighty fourth Regiment of Foot now reduced, who shall be willing to settle and become Inhabitants of Our said Province of Quebec, and shall apply for the same for such Quantities of Land as they shall be respectively intitled to, In consequence of our said promise and declaration contained in Our Instructions to Our Governors of New York and North Carolina dated the 3d April 1775, that is to say,

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|---|---|
| To Field Officers | 5000 Acres |
| Captains | 3000 |
| Subalterns | 2000 |
| Non Commission Officer | 200 |
| Privates | 50 |

and that the Surveys be made and Grants for the same delivered free of Expence as herein before directed, Provided nevertheless that every Commissioned and Non Commissioned Officer or private belonging to the said late 84th Regiment of Foot, who shall claim and apply for Land in Our Province of Quebec as aforesaid, shall declare upon Oath, that no Land has been obtained by him in any of our other Provinces in America under Our Royal declaration as aforesaid.

42. . . . It is Our further Will and Pleasure, that every Person within the meaning of these Our Instructions upon making application for Land shall take the Oaths directed by Law before you or our Commander in Chief for the time being, or some person by you or him authorized for that purpose and shall also at the same time make and subscribe the following Declaration (Viz.) "I, A B, do "promise and declare that I will maintain and defend to the utmost of my power "the authority of the King in His Parliament, as the supreme Legislature of this "Province," which Oaths and declaration shall also be taken, made, and subscribed by every Future Tenant before his, her, or their admission upon Alienation, Descent, Marriage or otherwise howsoever, and upon refusal the Lands to become revested in us Our Heirs and Successors; And it is our further Will and Pleasure that the expence of laying out and surveying as well the Seigneuries or Fiefs aforesaid, as the several Allotments within the same and of the Deed of admission shall be paid by the Receiver General of Our Revenue in the said Province of Quebec; out of such Monies as shall be in his hands, upon a Certificate from you or Our Commander in Chief for the time being in Council, Oath being made by Our Surveyor General to the Account of such Expence; Provided however that only one half of the usual and accustomed Fees of Office shall be allowed to Our said Surveyor General or any other of Our Officers in the said Province entitled thereunto upon any Survey or Allotment made, or upon admission into any Lands by Virtue of these Our Instructions.

43. . . . . And whereas we have some time since purchased the Seigneurie of Sorel from the then Proprietors, the Lands of which are particularly well adapted for improvement and cultivation; and the local situation of the said Seigneurie makes it expedient that the same should be settled by as considerable a number of Inhabitants of approved Loyalty as can be accommodated therein, with all possible dispatch—It is therefore Our will and Pleasure, that you do cause all such Lands within the same as are undisposed of, to be run into small Allotments, and that you do allot the same to such of the Non-Commissioned Officers and private Men of Our Forces who may have been reduced in Our said Province, or to such other of Our Loyal Subjects as may be inclined to settle and improve the same, in such Proportions as you may judge most conducive to their Interest and the more speedy Settlement of Our said Seigneurie. The Lands so allotted to be held by Us, Our Heirs, and Successors, Seigneurs of Sorel, upon the same Conditions and under the same reserved Rent at the Expiration of ten years, as the other Tenants of Seigneuries now hold their Lands and pay to Us, and also of taking the Oaths and making and subscribing the Declaration as herein before is mentioned and directed; The Expence of making the said Allotments and of Admission thereunto be also paid and defrayed in like manner as those in the Seigneuries directed to be laid out by these Our Instructions. It is nevertheless Our Will and Pleasure that the Allotments to be made to such of Our Loyal Subjects from the Provinces or Colonies now the United States of America, as may be disposed to settle and improve Lands in Our said Province of Quebec, shall be limited to those only who may have withdrawn themselves from the said Provinces or Colonies after the signing of the definitive Treaty of Peace with the said United States, & no other.

And it is Our Will and Pleasure that a Record be kept in the Office of the Receiver General of Our Revenue of every Admission into Lands as well by Virtue of these Our Instructions with respect to Our Loving Subjects retiring from the Provinces & Colonies, now the United States of America, and to Our Forces disbanded as aforesaid, as in Cases of future Admission by Alienation or otherwise, A Docquet of which shall be transmitted yearly to Us, thro' one of Our principal Secretaries of State, & also a Duplicate thereof to Our High Treasurer or the Commissioners of Our Treasury for the time being.

. . . . . .

## XLVII

## SYDNEY TO DORCHESTER[1]

[Trans.: Shortt and Doughty.]

Whitehall, 3d Sept., 1788.

My Lord,

Your Lordship will have seen, by the proceedings which took place in Parliament in the course of the last Session, the Arguments which were made use of on the Introduction of the Petition brought by Mr. Lymburner from Quebec, for a Change of the present Constitution of the Province, and the reasons which occurred to His Majesty's Ministers for avoiding any decision upon that very important Subject.[2]

It will, however, be absolutely necessary that it should be resumed very shortly after the next meeting, and it will, of course, be a matter of great importance to His Majesty's Servants, that they should be previously prepared to enter into a full discussion of the business, and to propose such arrangements as may be found to be expedient for removing every just and reasonable cause of complaint that may exist among His Majesty's Subjects, of any description whatsoever, who are Inhabitants of that Province.

The variety of applications which have from time to time been transmitted from thence upon this business, of so opposite a tendency to each other, render it extremely difficult to fix upon any Arrangements calculated to satisfy all the Parties interested in, or connected with it; His Majesty's Servants however, are desirous to give the matter a full consideration, and that they may be the better enabled to form a competent judgment of the steps adviseable to be taken, they are solicitous of obtaining from Your Lordship a full and impartial account of the different Classes of Persons who desire a Change of Government, as well as of those who are adverse to the Measure, specifying, as nearly as it can be ascertained, the Proportion of Numbers and Property on each side in the several Districts; and, That your Lordship at the same time should state in what manner, either the interests, or influence of the latter, might be affected by any alteration, and what is the Nature and grounds of their apprehensions from the Introduction of a greater Portion of English Law, or of a System of Government more conformable to that established in other British Colonies.

In particular, They wish to be informed from what Causes the objection of the old Canadian Subjects to an House of Assembly chiefly arises: Whether, from its being foreign to the Habits and Notions of Government in which they have been educated, or, from an apprehension that it would be so formed as to give an additional Weight to the New Subjects, and lead to the introduction of Parts of the English Law which are obnoxious to them; or, from an idea that being invested with a Power of Taxation, it would eventually subject their Property to Burthens from which they are at present exempted; In like manner, whether the Objections which appear to exist to a farther Introduction of Trial by Jury, arise either from Prejudices against the Nature and Mode of such a decision, or from the difficulty of finding Jurors properly qualified, and the inconvenience to Individuals of the necessary Attendance; or from the Notion of this species of Trial being necessarily coupled with Modes of Proof and Rules of Law, different from those to which they are accustomed.

Though several of these points have already been noticed by Your Lordship in some of your Letters to me, and in the Papers which accompanied them, yet His Majesty's Servants do not think that they are sufficiently explicit to enable them to form a decided opinion.

The anxiety of His Majesty's Servants to be perfectly informed with regard to all these matters as soon as possible, has induced them to send out an Extraordinary Packet Boat, and they are in hopes of receiving from Your Lordship upon her return, a full communication of the Sentiments entertained upon these several heads of enquiry, and which communication they wish to be made in a manner that may be proper to be laid before Parliament at the next meeting.

I find, upon an examination of the Plans submitted by Your Lordship's pre-

[1] Thomas Townshend, baron, afterwards viscount Sydney, became secretary of state for the home department, December 23, 1783.

[2] See Hansard, vol. xxvii, pp. 511 ff.

decessor,[1] that the most considerable part of the disbanded Troops and Loyalists who have become Settlers in the Province since the late War, have been placed upon Lands in that part of it which lie to the Westward of the Ceders,[2] and beyond those Lands (excepting only Detroit and its Neighbourhood) which are granted in Seigneurie; as these People are said to be of the number desirous of the Establishment of the British Laws, It has been in Contemplation to propose to Parliament a division of the Province, to commence from the Boundary Line of the Seigneurie granted to Monsieur de Longueil, and to take in all the Country to the Southward and Westward in the manner described in the inclosed paper. But, before they take any step towards the execution of this measure, they are desirous of receiving the advantage of Your Lordships opinion how far it may be practicable or expedient; or, whether any other line or mode of separation would be preferable. Your Lordship will however understand, that it is The Kings intention that the New Settlers in that part of the Province who now hold their Lands upon Certificates of Occupation, shall, at all events, be placed upon the same footing in all respects, as their Brethren in Nova Scotia and New Brunswick, by having their Lands granted to them in free and Common Soccage, with a Remission of Quit Rents for the first Ten Years; and Instructions will be prepared accordingly, as soon as Your Lordship's opinion upon the plan abovementioned shall be obtained.

With a view to the execution of the Plan in question, it will be necessary for you to consider, previously to your Report upon it, what sort of Civil Government ought to be formed for its internal arrangement, & whether the Number and description of the Inhabitants and other Circumstances are such as do, or do not, make the immediate Establishment of an Assembly within this district, practicable and adviseable. At all events It will be natural, as the greatest Part of these New Settlers are attached to the English Laws, that that System should be introduced as the general Rule, with such Exceptions or Qualifications as particular and local Circumstances may appear to require; At the same time Your Lordship will attend to the situation to which the Old Canadian Settlers at Detroit would be reduced, provided it may be found expedient, in consequence of the Information which the King's Servants expect to receive from Your Lordship, (and by which you will understand they mean in a great degree to be guided) to resist the Application for any Change of the Constitution of the remaining part of the Province; and, Your Lordship will also consider, in case of such a determination, in what part of the Province within the reserved limits, the Settlers at Detroit, if they should desire to be removed, might be accommodated with Lands the best suited to their advantage.

I am &c.,
SYDNEY.

## XLVIII

## DORCHESTER TO SYDNEY[3]

[Trans.: Shortt and Doughty.]

Quebec, 8th November, 1788.

My Lord,

The Province of Quebec consists at present of seven districts or counties; Quebec and Montreal in the central parts, Gaspe at and near the mouth of the Saint Lawrence, and the country, west of Point au Boudet, divided into the four districts[4] of Luneburg, Mecklenburg, Nassau, and Hesse. The Canadians, or new subjects, occupy the districts of Quebec and Montreal, and some are also to be found in the districts of Gaspe, and Hesse. The three districts of Luneburg, Mecklenburg, and Nassau, are inhabited only by the loyalists, or old subjects of the Crown. The Commerce of the country being chiefly carried on by the English occasions a considerable mixture of inhabitants in the towns of Quebec and Montreal, nearly in the proportion of one British to two Canadians. Some of the former are also settled at Three rivers, Terrebonne, William Henry, Saint Johns, and the entrance of Lake Champlain, and a small number are dispersed

[1] General Haldimand.
[2] The rapids on the St. Lawrence below lake St. Francis.
[3] Dorchester's reply to the dispatch of September 3, 1788 (No. XLVII).
[4] The districts of Luneburg, Mecklenburg, Nassau and Hesse were erected and defined by patent dated July 24, 1788. (See Shortt and Doughty, *op. cit.*, pp. 953 ff.)

among the Canadians in the country parishes; the fur trade has collected some hundreds at Detroit, as the fisheries have at the bay of Chaleurs, and other parts of the district of Gaspe. The proportions of British and Canadians in the two districts of Quebec and Montreal, exclusive of the towns, may be about one to forty, in the same districts, inclusive of the towns, one to fifteen, in the district of Hesse one to three, in the district of Gaspe two to three, and in the whole province, taken together, about one to five.

A change of the laws and form of government, by the introduction of an Assembly, is chiefly promoted by the commercial part of the community, in the towns of Quebec and Montreal. The Canadian Habitants, or farmers, who may be stiled the main body of the freeholders of the country, having little or no education, are unacquainted with the nature of the question, and would, I think, be for, or against it, according to their confidence in the representations of others. The Clergy do not appear to have interfered. But the Canadian gentlemen in general are opposed to the measure; they object to the introduction of a body of new laws, to the extent and tendency of which they are strangers; they express apprehensions of much disquietude among the people from the introduction of an assembly, and conceive that the low state of learning and knowledge in the country would lay them open to the pursuit and adoption of wrong measures, and to dangers, which a more enlightened people would not be exposed to. The fear of taxation, I take for granted, is among the motives of those, who are adverse to the change, and would no doubt strongly influence the sentiments of the common people, if they should come to consider the merits of the question. The objections, which appear to exist to a farther introduction of the trial by jury, arise partly from prejudice, and partly from an idea, that the choice would be narrow, and render it difficult to find jurors, totally disinterested.

In addition to these observations, it may be proper to mention, that the population of this country is chiefly confined to the margin of the waters from the western side of the gulph of Saint Lawrence in the district of Gaspe, to the settlements at and above Detroit, a chain of not less than eleven hundred miles; and that, though the ancient settled parts of the districts of Quebec and Montreal, from Kamaraska to Point au Boudet (comprehending about three hundred and seventy miles of the above line) may find no great burthen in the expence of a representation, it may be otherwise with the inhabitants newly set down in Gaspe, Luneburg, Mecklenburg, Nassau, and Hesse, and that the inconveniences and charges of assembling, from parts so distant, would be increased by the nature of the climate, which renders the roads for several months in the year difficult, if not impracticable.

A division of the province, I am of opinion, is by no means adviseable at present, either for the interests of the new, or the ancient districts, nor do I see an immediate call for other regulations, than such as are involved in the subject of the general jurisprudence of the country. Indeed it appears to me, that the western settlements are as yet unprepared for any organization, superior to that of a county. This has lately been given to them, and will, I trust, answer their present wants, if I except Hesse, whose commercial and complicated affairs call for a particular provision, now under the consideration of a Committee of the Council. But though I hold a division of the province at present inexpedient, yet I am of opinion, that no time should be lost in appointing a person of fidelity and ability, in the confidence of the loyalists, to superintend, and lead them, and to bring their concerns with dispatch to the knowledge of government, under the title of Lieutenant Governor of the four western districts above named.

Should a division of the province notwithstanding be determined by the wisdom of His Majesty's Councils, I see no reason, why the inhabitants of those western districts should not have an Assembly, as soon as it may be organized without detriment to their private affairs, nor against their having so much of the English system of laws, as may suit their local situation, and condition. But in this case particular care should be taken to secure the property and civil rights of the Canadian settlers at Detroit, who, I am convinced, would not chuse to emigrate, though good lands might be given them in the lower parts of the province. But, should they chuse to move, it would be attended with much inconvenience, as would their being left insulated, and attached to the district of Montreal.

With respect to proper limits for the new government, in the event of a separation, I would recommend those described in the annexed paper, which will

comprehend all the settlements of the loyalists on the river Saint Lawrence above Point au Boudet, and those also lately laid out for them on the south side of the Uttawas river.

I am with much respect and esteem
Your Lordship's most obedient, and most humble servant,
DORCHESTER.

THE PROPOSED LINE OF DIVISION.

To commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of pointe au Bodet, in the limit between the township of Lancaster, and the seigneurie of New Longueuil, running along the said limit in the direction of North, thirty four degrees west, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north western boundary of the seigneurie of Vaudreuil running north twenty five degrees east, until it strikes the Ottawas River, to ascend the said river into the lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

D.

## XLIX

## GRENVILLE TO DORCHESTER

[Trans.: Shortt and Doughty.]

(Private and Secret)

Whitehall, 20th Octr., 1789.

My Lord,

The public dispatches [1] of this date will inform your Lordship of the intention of His Majesty's Servants, with respect to the plan to be proposed in Parliament for altering the present Constitution of Canada.—I feel that it is due to your Lordship, that I should inform you of the grounds on which this resolution has been adopted, in a more particular manner than the nature of a public dispatch appears to admit; and, for that purpose, I inclose to your Lordship in confidence, a paper [2] containing the heads of those suggestions, on which the present measures are founded. I am persuaded that it is a point of true Policy to make these Concessions at a time when they may be received as matter of favour; and when it is in Our own power to regulate and direct the manner of applying them, rather than to wait 'till they shall be extorted from us by a necessity which shall neither leave us any discretion in the form, nor any merit in the substance of what We give.

I am ignorant how far your Lordship's Opinion coincides with the ideas stated in the inclosed paper. One point I observe, and have alluded to in my public Letter, on which you have stated Objections; but I think they are such as apply to the present state of the Province, rather than to what it would be under a different form of Government.

With regard to the remainder, it would certainly give me great satisfaction if I could find the opinions which I entertain confirmed by your Lordship's experience and knowledge of the Subject.

But, in all events, I have not the smallest doubt of your Lordship's wish to co-operate in carrying into execution, in the most advantageous manner, that Plan which Parliament shall ultimately adopt, on a subject which has been so long before them; and I trust you will see the importance in this point of view, of your delaying your visit to this Country, 'till after the new Government shall have been put in motion.

There is one subject adverted to in the paper which I now enclose, of which no mention is made, either in the Bill [3] now transmitted to your Lordship, or in the dispatch which accompanies it. What I mean is, the suggestion relative to the possibility of making such reservations of Land adjacent to all future Grants, as may secure to the Crown a certain and improving Revenue.—A

[1] See No. L. William Wyndham Grenville, afterwards lord Grenville, succeeded Sydney as secretary for the home department in June, 1789. [2] Shortt and Doughty, *op. cit.*, pp. 970 ff.

[3] The first draft of the constitutional act of 1791. It is given in Shortt and Doughty, *op. cit.*, pp. 992 ff.

Measure, which, if it had been adopted when the Old Colonies were first settled, would have retained them to this hour in obedience and Loyalty. I confess that I am very particularly anxious to find myself sufficiently informed to be able to recommend to His Majesty, the adoption of some system of this nature, in His remaining Colonies, and I should therefore feel myself obliged to your Lordship, if you would consider it with attention, and state to me your Sentiments, both as to the general principle, and as to the best mode of carrying it into effect, in the different Provinces under the King's Government in North America.

Your Lordship will perceive, by the different accounts, which you will receive from Europe, that the state of France is such, as gives Us little to fear from that quarter in the present moment. The opportunity is therefore most favourable for the adoption of such measures as may tend to consolidate Our strength, and increase our resources, so as to enable Ourselves to meet any efforts that the most favourable event of the present troubles can ever enable her to make.

I am, &c.,
W. W. Grenville.

## L

## GRENVILLE TO DORCHESTER

[Trans.: Shortt and Doughty.]

Whitehall, 20th Octr., 1789.

My Lord,

It having been determined to bring under the consideration of Parliament early in the next Session the propriety of making farther provision for the good government of the Province of Quebec, I enclose to your Lordship the draught of a Bill [1] prepared for this purpose.

His Majesty's Servants are desirous, before this Plan shall be proposed to Parliament, to avail themselves of such observations upon it as your Lordship's experience and local knowledge may suggest. It is probable that Parliament may not meet till towards the end of January next, and that there will therefore be full time for me to receive your Lordship's answer to this dispatch with such remarks as may occur to you on the proposed Bill, and with such information as may be necessary to enable me to supply those particulars of detail which are now left in blank.

Your Lordship will observe that the general object of this plan is to assimilate the Constitution of that Province to that of Great Britain, as nearly as the difference arising from the manners of the People and from the present Situation of the Province will admit.

In doing this a considerable degree of attention is due to the prejudices and habits of the French Inhabitants who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government.

This consideration has had a great degree of weight in the adoption of the plan of dividing the Province of Quebec into two Districts which are to remain as at present under the administration of a Governor General, but are each to have a Lieut. Governor and a separate Legislature.

The King's Servants have not overlooked the reasons urged by your Lordship against such a separation,[2] and they feel that while Canada remained under its present form of Government great weight would have been due to those suggestions; but when the resolution was taken of establishing a Provincial Legislature, to be constituted in the manner now proposed, and to be chosen in part by the People every consideration of policy seemed to render it desirable that the great preponderance possessed in the Upper Districts by the King's antient Subjects, and in the lower by the French Canadians should have their effect and operation in separate Legislatures; rather than that these two bodies of People should be blended together in the first formation of the new Constitution, and before sufficient time has been allowed for the removal of antient prejudices, by the habit of obedience to the same Government, and by the sense of a common interest.

[1] See note 3 of preceding page.

[2] See No. XLVIII.

With respect to the intended Boundaries of these Provinces a blank is left in the Bill in order that your Lordship may, with the assistance of the Surveyor General, who is now in Quebec, consider of such a description of those Boundaries as may be sufficiently intelligible and certain, so as to leave no room for future difficulties on that subject. The division between the two Provinces is meant to be the same as is mentioned to your Lordship in Lord Sydney's Letter of 3d Sept., 1788, with the alteration suggested by your Lordship in your Letter of the 8th November following.[1]

There will however be a considerable difficulty in the mode of describing the Boundary between the District of Upper Canada and the Territories of the United States. As the adhering to the Line mentioned in the Treaty with America would exclude the Posts which are still in His Majesty's Possession, and which the infraction of the Treaty on the part of America has induced His Majesty to retain, while on the other hand the including them by express words within the Limits to be established for the Province by an Act of the British Parliament would probably excite a considerable degree of resentment among the Inhabitants of the United States, and might perhaps provoke them to measures detrimental to Our Commercial Interests. Possibly the best solution for this difficulty might be to describe the Upper District by some general words such as "All the Territories, &c., &c., &c., possessed by and subject to His Majesty, and being to the West or South West of the Boundary Line of Lower Canada, except such as are included within the present Boundaries of the Government of New Brunswick.

In settling this point of the Boundaries it will also be a question, whether the Fishing Settlement in Gaspé may not with advantage be annexed to the Government of New Brunswick rather than to be left as a part of that of Lower Canada under the system now proposed to be established particularly as the local Circumstances of that District might render a representation of it in an Assembly at Quebec extremely difficult if not impracticable.

The Legislature in each of the Two Provinces is intended, as your Lordship will observe from the draught of the Bill, to consist of His Majesty represented by His Governor, or Lieutenant Governor, a Legislative Council, and a House of Assembly.

It is intended to separate the Legislative from the Executive Council, and to give to the Members of the former a right to hold their Seats during their Life and good Behaviour, provided they do not reside out of the Province, or attach themselves to any Oath of allegiance or Obedience to the United States, or to any other Foreign Power.

It is the King's farther intention to confer upon the Persons whom he shall distinguish by calling them to His Legislative Council some mark of Honour, such as a Provincial Baronetage either personal to themselves, or descendible to their Eldest Sons, in lineal Succession.

A great accession of wealth to the Provinces might probably induce his Majesty at a future period to raise the most considerable of these Persons to a higher degree of Honour, but this could certainly not be done with propriety under the present Circumstances.

The Object of these regulations is both to give to the Upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the Old Colonial Governments, and to establish in the Provinces a Body of Men having that motive of attachment to the existing form of Government, which arises from the possession of personal or hereditary distinction.

It will be very necessary that great attention should be paid to the choice of those Persons who are to be placed in this situation in the first instance, and of those whom His Majesty may be advised from time to time to add to that number; and as your Lordship's long knowledge of the Province and of the Individuals who compose the higher classes of the Community, must render your Lordship more particularly competent to such a Selection, I must desire that your Lordship will consider this point with that degree of attention to which its importance entitles it, and that you will state to me the names of those Persons whom you may think fit objects of the King's favor in this respect, in each of the Two Provinces intended to be formed.

In the draft of the Bill which I enclose, a blank is left for that which is to be fixed as the smallest number of which the Councils are respectively to be com-

[1] See Nos. XLVII and XLVIII.

posed. It is certainly desireable that this number should not be made too large in the first instance, as it would be easy for His Majesty to add to it whenever it may be found expedient, while on the other hand the calling improper Persons to the Council, in order to make up the number required by the Bill would under the system now proposed be productive of permanent inconvenience and mischief to His Majesty's Government.

Of this point also your Lordship must unquestionably be the best Judge, and I shall be anxious to learn your Sentiments upon it. My present idea, founded, however, rather on conjecture than on any satisfactory information, would be that the Legislative Council in Upper Canada should not consist of less than six Members, and in lower Canada of not less than Twelve; and that the selection of these Persons should be made with a view to encreasing the number by some addition at no very distant period, as a mark of His Majesty's favor to those Persons whose Conduct may be found to entitle them to it.

Your Lordship will also state to me for His Majesty's information, the number and names of those Persons whom you may think proper to recommend to His Majesty for Seats in the Executive Council.

It is by no means intended that the Members of the Legislative Council should be excluded from this Body, or that it should on the other hand be wholly composed of Persons of this description. It may be adviseable that some of the Persons named to the Executive Council in one of the Districts, should also be admitted to the same distinction in the other.

In providing for the establishment of a House of Assembly in each of the Two Provinces, the first question of detail which occurs is that of the Numbers of which these Bodies should consist, and of the manner in which they should be elected; particularly with respect to the division of the Provinces into Counties or Districts, and to the relative proportion of Representation to be allowed to the Towns.

The decision of these points must necessarily depend on local knowledge: They are therefore left in blank in the Draft of the Bill, and I must desire your Lordship's opinion upon them. I am not sufficiently informed whether the present Division of the Counties would be well adapted to the Object in question, or whether a subdivision into Parishes or Districts would be more desireable.

I enclose for your Lordship's information a Paper delivered to me by Mr. Lymburner,[1] containing a Plan of Representation for the Province; but as far as I am at all enabled to form an Opinion on the Subject, that plan appears to me to be liable to great objection. I also transmit a plan for the same purpose framed by the Board of Trade in 1765.[2]

The next point to be considered is the Qualifications of the Electors, and of the Persons to be elected in each of the Provinces. This is also in great measure a point of local detail, depending on the condition & circumstances of the different Classes of the Inhabitants of the Provinces; and on which His Majesty's Servants are therefore desirous of receiving your Lordship's Opinion. In the margin of the Bill which I now transmit, I have marked the suggestions which have been made to me on this Subject; but I do not feel myself enabled, without farther information, to form any satisfactory Opinion upon them.

The remaining Clauses of the Bill do not seem to require much particular discussion in this Letter; Your Lordship will observe by the 27th Clause, that it is intended to continue all the existing Laws of the Province untill they shall be repealed or varied, by the Legislatures of the respective Provinces. An exception is however made and there is a Clause left in blank for the insertion of such Commercial Regulations, if any, which it may be thought expedient to introduce, as exceptions to the Canadian Laws, respecting Property and Civil Rights, previous to investing the Assembly in Lower Canada with a right to negative all future changes which may be proposed.

This is a point which is now under the consideration of His Majesty's Law Servants, but as it is probable that I shall receive your Lordship's answer to this dispatch before it may be necessary to come to a final decision on this Subject, I shall be glad to be furnished with any suggestions which may occur to your Lordship upon it, as likely to conduce to the advancement and security of the Commercial Interest of this Kingdom, and that of the Province as connected with it.

The Clause enabling Persons to commute the holding of their Lands into free

[1] See No. XLIV. [2] This date should be 1769. (See Shortt and Doughty, pp. 991, note 2.)

and comon Soccage is conformable to what your Lordship has recommended with respect to the Upper Districts, and it seems a measure of good policy to extend the same principle to the lower parts of the Province, as far as the prejudices of the French Inhabitants will allow.

I should wish to know your Lordship's sentiments with respect to the time which might be most convenient for the commencement of this new System, supposing the Bill to be passed in the next Session of Parliament.

I am, &c.,
W. W. Grenville.

## LI

## DORCHESTER TO GRENVILLE

[Trans.: Shortt and Doughty.]

Quebec, 8th February, 1790.

Sir,

I received the triplicate of your dispatch [1] No. 2 on the 20th of last month, and avail myself of the first opportunity to submit to His Majesty's Ministers such observations on the proposed Bill, as occur to me in the moment.

The inclosed Draught [2] comprehends the corresponding alterations, engrafted upon the Bill, transmitted in your letter.

The attainment of a free course of Justice throughout every part of His Majesty's possessions, in the way least likely to give umbrage to the United States, appears to me very desirable. For this reason the Boundaries of the two proposed Provinces are described by a precise Partition line only of the Country of Canada, with the Addition of such general words, as I hoped might include the Territories subject to, or possessed by, His Majesty, to the southward of the forty fifth degree of North Latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, and Michilimakinac, corresponding as nearly as could be, with the idea expressed in your letter. But upon consulting the Chief Justice, relative to the operation of this description of the Boundary, I find, that he does not think it will answer the desired end.

The district of Gaspé it seems best for the present to leave annexed to the Province of Lower Canada, on account of its commercial connection with this province, and because, notwithstanding its distance, the communication of it with Quebec by water, is easier than its access to the seat of the Government of New Brunswick, in the present condition of that province; the more so, as the difficulty of a representation from that District, in an Assembly at Quebec is greatly diminished, by the opening left in the Bill for non residents of any district being elected Representatives thereof.

But the Bay of Chaleurs being subject to different Governments, particularly during the present uninhabited state of that part of New Brunswick, gives an opportunity to ill disposed persons to elude the controul of the law, to the detriment of the Fisheries, and good order; a clause to remedy this Evil is therefore inclosed, which, if approved of, may be introduced into the Bill, as an addition to the second clause.

Many advantages might result from an hereditary Legislative Council, distinguished by some mark of honor, did the condition of the country concur in supporting this dignity; but the fluctuating state of Property in these Provinces would expose all hereditary honours to fall into disregard; for the present therefore it would seem more advisable to appoint the members during life, good behaviour, and residence in the province. The number for Upper Canada to be not less than seven, and for Lower Canada not less than fifteen, to be encreased by His Majesty, as the wealth and population of the Country may require. To give them as much consequence as possible, in the present condition of the Province, they should be selected from among the men of property, where talents, integrity, and a firm attachment to the Unity of the Empire may be found. I shall take the first opportunity of communicating the names of such persons, as appear to me the fittest objects of this description.

The House of Assembly for Upper Canada might consist of not less than

[1] See No. L.

[2] Printed in Shortt and Doughty, pp. 1006 ff.

Sixteen, and that for Lower Canada of not less than thirty members, or nearly double in number to the Legislative Councils, to be augmented also in proportion to the Population of the Country.

As far as I can judge at present it might be advisable to give the Towns of Quebec and Montreal in Lower Canada, a representation of four members each, and two to the Town of Three Rivers, dividing the Country Parishes thereof into twenty Circles, to send one member each. In Upper Canada the four districts of Luneburg, Mecklenburg, Nassau, and Hesse, to furnish four members each, and hereafter to be subdivided into as many Circles and Towns, as their condition may require. But the present time is too short to enter into a more minute detail, for which reason it is proposed to fix only the smallest number of Members in the Bill, and to leave the actual subdivision and apportionment, necessary for an equal representation, to be ascertained by the Lieutenant Governors, with the advice of the Executive Councils, of the respective Provinces, under authority for that purpose from His Majesty.

The qualification of Electors, and persons to be Elected, as to birth, has been extended to inhabitants of the Provinces before and since the conquest, because they may be considered upon an equal footing with the natives, and to foreigners naturalized, because an accession to the Province of light and property from abroad is desirable, and not likely to injure the King's interest, under the guards proposed.

The disqualifications of Persons, attainted for Treason, and Felony, Deserters from the Militia when called out into service, and Bankrupts, until the full payment of their debts, have been added to the fourteenth clause, as a check to these evils, and from a persuasion, that persons of that description are not entitled to any political honors or consequence.

On the expediency of inserting any commercial regulations, as exceptions to the Laws of Canada, previous to investing the Assembly in Lower Canada with a right to negative all future changes, I regret that the complicated and professional nature of the subject, prevents my forming any other than a general opinion, that whatever regulations of this sort shall be thought proper to be adopted, should be enacted Specially, unfolded to the people, and not introduced in bulk, and by general description.

The introduction of a Soccage Tenure I think necessary in the upper country, and advisable in every part of the province, and this free of Quitrents from all, holding no more than one thousand acres, as recommended in my letter to Lord Sydney No. 18. And the Quitrent, which it may be judged proper to lay on large Tracts, should be given up to the Provincial Governments for their Support, that all seeds of discord between Great Britain and her Colonies may be prevented. And independent of this important consideration perhaps the true principle of Œconomy is rather to obviate the necessity of sending money Abroad, than to bring home any from Quitrents or Duties of any Kind.

I take for granted, that the benefits, arising to the subject, from a change of the tenure in Fief to that in Common Soccage, are meant to run throughout, as from the King to His Tenant, so from the latter to all his Under-tenants, at the time of change; Otherwise the advantages will be confined to a few, and an interest created unfriendly to the improvement of the country. Some alterations have been made in the clause relative to this point, with a view of clearing doubt upon the subject.

The commencement of the operation of the Act, as to every part, excepting only the issuing the Writs of Election, and calling together the Houses of Assembly of the respective Provinces, has been fixed at such time, as may be declared by His Majesty, with the advice of His Privy Council, not later than Six months after the notification of the Act in this Country, which I think will allow time sufficient for all necessary arrangements, as to these points.

But for the Convocation of the Assemblies a more distant period appears to be necessary, for the reasons above stated. As soon as the proper plans for their organization shall have been prepared, His Majesty may order the Assemblies to be convened, as soon as convenient, previous to the first of January, 1792, as suggested in the thirty first clause of the Bill, to which is likewise added a proposal for the temporary Government of the two Provinces in the interval, by the Lieutenant Governors, and Legislative Councils thereof, According to the model of the Quebec Bill.

Should this be approved, the Royal indulgence of returning to England for

a few months on my private Affairs, would give me an opportunity to lay before His Majesty's Ministers all further explanations in my power on this subject.

Before I conclude, I have to submit to the wisdom of His Majesty's Councils, whether it may not be advisable to establish a General Government for His Majesty's Dominions upon this Continent, as well as a Governor General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire.

I inclose a copy of a letter from the Chief Justice, with some additional clauses, upon this subject,[1] prepared by him at my request, together with his draught of an other proposed addition to the Bill, to provide for the trial of foreign treason and murder, as also a copy of his letter respecting the operation of the Boundary, as described in the Bill, with his idea of the Addition necessary to give free scope to our Courts of Justice. The clause above referred to under the letter B was also prepared by him at my request.

I am with much respect and esteem, Sir,
Your most obedient, and most humble servant,
DORCHESTER.

## LII

## CHIEF JUSTICE SMITH TO DORCHESTER

[Trans.: Shortt and Doughty.]

Quebec, 5th February, 1790.

My Lord,

The clause inclosed for the Trial of extraprovincial offences appears to me to be necessary to encourage that spirit of Enterprize, which leads our people in the Fur Trade to explore the Depths of this Continent, and has carried them almost over to the Eastern shores of the Pacific Ocean. This Commerce, elsewhere wearing out, by the encreased Population of the northeastern parts of the antient Continent, will soon become the monopoly of our nation. I have couched it in terms least likely of any that occur to me, to excite the Jealousy of our Neighbours.

The Bill with the other additions for the intended Reforms in this Country left to be supplied by Your Lordship's local Experience, greatly improves the old model of our colonial Governments; for even those called the Royal Provinces, to distinguish them from the Proprietary and chartered Republics of the Stuart Kings had Essential Faults, and the same general tendency.

Mr. Grenville's plan will most assuredly lay a foundation for two spacious populous and flourishing Provinces, and for more to grow out of them; and compose, at no remote period, a mass of Power very worthy of immediate attention.

I miss in it however, the expected Establishment to put what remains to Great Britain of Her Antient Dominions in North America, under one general direction, for the united interest and safety of every Branch of the Empire.

The Colonies of England were flourishing Colonies. It was the natural effect of the connection, the Character of the People, and the Genius of the English Constitution. Our's will be so too. But that prosperity may be their ruin. And I trust in God that the wisdom, which is dictating the new Arrangements for us, will perfect its work, by a system to prevent our repeating the Folly, that has plunged the several parts of the Continent into poverty and distress.

Native as I am of one of the old Provinces,[2] and early in the public service and Councils, I trace the late Revolt and Rent to a remoter cause, than those to which it is ordinarily ascribed. The Truth is that the Country had outgrown its Government, and wanted the true remedy for more than half a century before the Rupture commenced—To what period it continued to be practicable is problematical, and need not now be assigned.

To expect wisdom and moderation from near a score of Petty Parliaments, consisting in effect of only one of the three necessary branches of a Parliament,

[1] See Nos. LII and LIII.

[2] Chief justice Smith was born in New York. He was a member of the council of New York state before the American revolution.

must, after the light brought by experience, appear to have been a very extravagant Expectation. So it has been to my view above twenty years, and I did not conceal it.

My Lord, an American Assembly, quiet in the weakness of their Infancy could not but discover in their Elevation to Prosperity, that *themselves* were the substance, and the Governor and Board of Council mere shadows in their political Frame. All America was thus, at the very outset of the Plantations, abandoned to Democracy. And it belonged to the Administrations of the days of Our Fathers to have found the Cure, in the Erection of a Power upon the Continent itself, to controul all its own little Republics, and create a Partner in the Legislation of the Empire, Capable of consulting their own safety, and the common welfare.

To be better understood by your Lordship I beg leave to put a paper under this cover,[1] in the form of additions to the present proposed Bill, partly suggested by the necessity of something to give a real and useful significancy to Your Lordship's nominal command of more Provinces than this.[2]

As to the moment for commencing such an Establishment, that certainly must be the worst, when it shall be most wanted. And since its Erection will speak Intentions, and may give Umbrage, that will be the best time, in which that Umbrage shall excite the least apprehension.

The Debility of our Neighbours is notorious, nor can be succoured during the Distractions of France, and the consternation Spread by those Distractions through all Europe.

Here in these provinces, where it is of much consequence, to set out with good habits, what juncture can be so favourable, as when the thousands thrown into them, under Your Patronage and Direction, have their Loyalty confirmed by Resentments for their Sufferings; and so are disposed to take, and especially from Your hand, whatever the wisdom of Great Britain shall prescribe, as a Gift of her Benevolence.

As to Canada, I meant that part of it to become Lower Canada, the Biasses in it, if there are any remaining, to the Stock, from which it was severed, are become perfectly harmless, by that Body of English Loyalty Your Lordship has planted in the West—By their aversion to share in the Burdens and Miseries of the Revolted Colonies, and by the growing Discernement, that our safety and Prosperity is only to be found in the Commerce and Arms of Great Britain.

I am old enough to remember, what we in the Maritime Provinces[3] dreaded from this French Colony in the North, and what it cost to take away that dread, which confined our Population to the Edges of the Atlantic; and my mind is therefore carried, under such an Administration as the present one, into a strong Persuasion, that nothing will be neglected to enable Great Britain, so to serve herself of that Power, she already possesses here, as to check any Councils to be meditated to her Detriment, by the new Nation she has consented to create. She may do more; but this is out of my province.

So much, my Lord, You'll forgive me. I could not repress what I owed to the vindication of my Zeal, in the sacrifice of my fortune for the British Interest, and as I think still for the best Interests too of the Country of my Birth. Most of all I owed it to my Sovereign, in whose Grace I found a Relief at the end of the Storm.

With a deep and grateful sense of all Your kindnesses and the honour of your request of my poor abilities, upon questions of so great magnitude and consequence.

I am, My Lord, with the highest respect and esteem,
Your Lordship's most humble and most obedient Servant,
(Signed) Wm. Smith.

[1] i. e. No. LIII.
[2] See *London Gazette*, April 15, 1786, for Dorchester's commission as governor of all British North America.
[3] i. e. the maritime provinces of the former British colonies.

## LIII

## PROPOSED ADDITIONS TO THE NEW CANADA BILL FOR A GENERAL GOVERNMENT

[Trans.: Shortt and Doughty.]

And to provide still more effectually for the Government safety and prosperity of all His Majesty's Dominions in North America, and firmly to unite the several branches of the Empire.

(1) Be it also enacted by the same authority that there shall be (with a Governor General) a Legislative Council and a General Assembly for all His Majesty's Dominions and the Provinces whereof the same do now or may hereafter consist in the parts of America to the Southward of Hudson's Bay, and in those seas to the Northward of the Bermuda or Somers Islands; And that His Majesty, His Heirs and Successors shall have power by and with the advice and consent of the said Legislative Council and General Assembly to make laws for the peace, welfare and good Government of all or any of the said Provinces and Dominions: And that such Laws being passed by the said Legislative Council and General Assembly and being assented to by His Majesty, His Heirs and Successors, or being assented to in His Majesty's name by the Person appointed or to be appointed Governor General of the Provinces and Dominions aforesaid, or such person as may be appointed by the Crown to exercise the powers of Governor General on the death or absence of such Governor General, shall be valid and binding on the inhabitants of the said Dominions or such part thereof as shall for that purpose be expressed.

(2) And be it enacted by the same authority that such Legislative Council may be composed of at least Members from each of the said Provinces to be appointed as His Majesty by His Royal Instructions to the Governor General for the time being shall authorize and direct, who shall hold their several places in the said Council for Life subject nevertheless to such terms and conditions as are herein before declared to be annexed to the trust and station of a member of the Legislative Council of either of the said Provinces of Upper & Lower Canada, and saving to His Majesty's Governor General or the Person upon whom that trust by His Majesty's appointment may devolve, power and authority from time to time by an instrument under the Great Seal to be created for the British Dominions in North America, to constitute, appoint and remove the Speaker of such Legislative Council.

(3) And be it also enacted by the same Authority that such General Assembly may be composed of such persons as may be elected by the majority of the House of Assembly of the Province for which they serve to be manifested by Triplicate Instruments under the hand and seal of the Speaker thereof to the Governor General, the Speaker of the Legislative Council, and the Speaker of the General Assembly.

(4) And be it also enacted by the same authority that to give any Acts of the said Governor General, Legislative Council and General Assembly, the force and authority of a Law, the same shall have been assented to in the said Legislative Council by the majority of the voices forming a house of Council, according to His Majesty's appointment thereof, and shall have been assented to in the said General Assembly by such and so many Voices as will make it the Act of the majority of the Provinces, having right to be represented in the said General Assembly, and it shall be a house of General Assembly as often as there shall be assembled one or more members duly elected by each of the Assemblies of the said Provinces or of the greater number of such provinces.

(5) And be it further enacted by the same authority that it shall be lawful for His Majesty, His Heirs and Successors to authorize and direct His Governor General for the time being or the Person upon whom that trust by His Majesty's Appointment may devolve, in His Majesty's name and by an instrument under the great seal of the British Dominions in North America to summon and call together such General Assemblies in such manner as His Majesty shall be pleased to signify and command by His Royal Instructions to such Governor General.

(6) And be it also enacted by the same authority that the Governor General under such instructions as he may have received from His Majesty may assemble the said Legislative Council and General Assembly where, and prorogue and

dissolve them, when and as often as he shall judge it necessary, Provided always and be it enacted that they shall be called together one at least in every two years, and continue to have the right of sitting seven years from the Teste or day of the process or summons for their election unless they shall be sooner dissolved by the Authority aforementioned. But no Member either of the said Legislative Council or General Assembly shall be permitted to sit or vote in the General Legislature untill he shall have taken such Oaths as hereinbefore directed to be taken by the Members of the Legislative Council and Assembly of Upper or Lower Canada, or not being an Inhabitant of either of the said Provinces last mentioned such other oaths and qualifications as are taken to become a Member of the Parliament of Great Britain as by His Majesty's Instructions shall be directed and required.

(7) And be it also enacted by the same Authority that whenever any Bill which has been passed by the said Legislative Council and by the said General Assembly shall be presented for His Majesty's Assent to the Governor General for the time being or the Person exercising that trust under His Majesty's Authority, it shall and may be lawful for such Governor General or other person exercising the said trust, at his discretion, subject nevertheless to such Instructions as he may from time to time receive from His Majesty, His Heirs and Successors, either to declare His Majesty's assent to such Bill, or to declare that he withholds such assent, or that he reserves the said bill untill His Majesty's Pleasure shall be signified thereon. And no Bill so to be presented and not assented to in manner aforesaid shall have the force of a Law.

(8) And be it further Enacted by the same Authority that nothing in this Act contained shall be construed to prevent His Majesty from appointing, erecting, and constituting such general and executive Council and Councils as he may judge proper for the said provinces and Dominions in general, and Any other Office, in His Royal Judgment and discretion requisite for the said general Government; or from nominating and appointing thereto from time to time, such persons as he shall think fit to compose the same Executive Council, or to execute such offices or from removing therefrom any person or Persons whom he may think fit to remove.

(9) And be it also Enacted by the same Authority that it shall and may be lawful for His Majesty to give Authority to his said Governor General, or the person exercising that trust, on his arrival in either of the provinces within his commission, to assume the authority and to perform all the duties and functions which the Lieutenant Governor thereof, might exercise and perform; and the powers and authority of such Lieutenant Governor shall be suspended & so continue during the time of the Governor General's being within the same province; and that it shall also be lawful for His Majesty to give to the said Governor General for the time being, tho' absent in some other province of His General Government, authority respecting any act of any of the Provinces of such nature and tendency as His Majesty may see cause by His Royal Instruction to describe, to suspend the execution of such Act until His Majesty's Pleasure shall be signified respecting the same; to which end it shall be the duty of the person administering the Government in every Province subject to the Governor General's Authority, to transmit to him a copy of every bill to which he has assented as soon as possible after the enacting of the same into a law; and shall upon the suspension thereof by the Governor General immediately cause the same to be made known by proclamation under the great seal of his Province in the manner most effectual for making the same universally known to the Inhabitants of the same Province, and all others whom the same may concern.

(10) And be it further enacted by the Authority aforesaid, that nothing in this Act contained shall be interpreted to derogate from the rights and Prerogatives of the Crown for the due exercise of the Royal and executive authority over all or any of the said Provinces; or to derogate from the Legislative Sovereignty and Supremacy of the Crown and Parliament of Great Britain; but the Acts of Legislation of either of the said Provinces, as well as the Acts of the Governor General and the Legislative Council and General Assembly so to be made, shall be subject to the Royal dis-allowance as exercised heretofore respecting the laws of any of the British Provinces, and the said Dominions and all the Provinces into which they may be hereafter divided shall continue and remain to be governed by the Crown and Parliament of Great Britain as the supreme Legislature of the whole British Empire.

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## LIV

## THE CONSTITUTIONAL ACT 1791[1]

(31 George III., c. 31.)

*An Act to repeal certain parts of an Act, passed in the fourteenth year of His Majesty's reign, intituled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to make further provision for the Government of the said Province.*

Preamble. 14 Geo. III, cap. 83 recited.

Whereas an Act was passed in the fourteenth year of the reign of his present Majesty, intituled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America": And whereas it is expedient and necessary that further provision should now be made for the good Government and prosperity thereof: May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare, and good Government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander in Chief for the time being, shall be, and the same is hereby repealed.

So much of recited Act as relates to the appointment of a Council for Quebec, or its powers repealed.

Within each of the intended Provinces a Legislative Council and Assembly to be constituted, by whose advice His Majesty may make laws for the Government of the Province.

II. And whereas his Majesty has been pleased to signify, by his message to both Houses of Parliament, his Royal intention[2] to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada: Be it enacted by the authority aforesaid, that there shall be within each of the said Provinces respectively a Legislative Council and an Assembly, to be severally composed and constituted in the manner hereinafter described; and that in each of the said Provinces respectively, His Majesty, His Heirs, and Successors, shall have power during the continuance of this Act, by and with the advice and consent of the Legislative Council and Assembly of such Provinces respectively, to make laws for the peace, welfare and good Government thereof, such laws not being repugnant to this Act; and that all such laws being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, or assented to in His Majesty's name by such person as His Majesty, His Heirs or Successors, shall from time to time appoint to be the Governor or Lieutenant-Governor of such Province, or by such person as His Majesty, His Heirs or Successors, shall from time to time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under this Act, valid and binding, to all intents and purposes whatever, within the Province in which the same shall have been so passed.

His Majesty may authorize the Governor or Lieutenant Governor of each Province to summon members to the Legislative Council.

III. And be it further enacted by the authority aforesaid, that for the purpose of constituting such Legislative Council, as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for his Majesty, his heirs, or successors, by an instrument under his or their sign manual, to authorize and direct the Governor or Lieutenant-Governor, or person administering the Government, in each of the said Provinces respectively, within the time herein after mentioned, in His Majesty's name, and by an instrument under the Great Seal of such Province, to summon to the said Legislative Council, to be established in each of the said Provinces respectively, a sufficient number of discreet and proper persons, being not fewer than seven, to the Legislative Council for the Province of Upper Canada, and no fewer than fifteen to the Legislative Council for the Province of Lower Canada; and that it shall also be lawful for his Majesty, his heirs or successors, from time to time, by an instrument under his or their sign manual, to authorize and direct the Governor or Lieutenant-Governor, or person administering the Government in each of the said Provinces respectively to summon to the Legislative Council of such Province in like manner such other

[1] The events which led to the passing of this act are outlined in the previous documents. The debates are in Hansard, vols. xxviii and xxix.

[2] This intention was carried out by an order-in-council dated August 24, 1791. (See Doughty and McArthur, *Documents relating to the Constitutional History of Canada*, Canadian Archives 1914, p. 3.)

persons as his Majesty, his heirs or successors, shall think fit; and that every person who shall be so summoned to the Legislative Council of either of the said Provinces respectively, shall thereby become a member of such Legislative Council, to which he shall have been so summoned.

No Person under 21 years of age, etc., to be summoned.

IV. Provided always, and be it enacted by the authority aforesaid, that no person shall be summoned to the Legislative Council, in either of the said Provinces, who shall not be of the full age of twenty-one years, and a natural born subject of his Majesty, or a subject of his Majesty naturalized by Act of the British Parliament, or a subject of his Majesty having become such by the conquest and cession of the Province of Canada.

Members to hold their seats for life.

V. And be it further enacted by the authority aforesaid, that every member of each of the said Legislative Councils shall hold his seat therein for the term of his life, but subject nevertheless to the provisions hereinafter contained for vacating the same, in the cases hereinafter specified.

His Majesty may annex to hereditary titles of honour the right of being summoned to the Legislative Council.

VI. And be it further enacted by the authority aforesaid, that whenever his Majesty, his heirs or successors, shall think proper to confer upon any subject of the Crown of Great Britain, by letters patent under the Great Seal of either of the said Provinces, any hereditary title of honor, rank, or dignity of such Province, descendible according to any course of descent limited in such letters patent, it shall and may be lawful for his Majesty, his heirs or successors, to annex thereto by the said letters patent, if his Majesty, his heirs or successors shall so think fit, an hereditary right of being summoned to the Legislative Council of such Province, descendible according to the course of descent so limited with respect to such title, rank, or dignity; and that every person on whom such right shall be so conferred, or to whom such right shall severally so descend, shall thereupon be entitled to demand from the Governor, Lieutenant-Governor, or person administering the Government of such Province, his writ of summons to such Legislative Council at any time after he shall have attained the age of twenty-one years, subject nevertheless to the provision hereinafter contained.

Such descendible right forfeited, and

VII. Provided always, and be it further enacted by the authority aforesaid, that when and so often as any person to whom such hereditary right shall have descended shall, without the permission of his Majesty, his heirs or successors, signified to the Legislative Council of the Province by the Governor, Lieutenant-Governor or person administering the Government there, have been absent from the said Province for the space of four years continually, at any time between the date of his succeeding to such right and the time of his applying for such writ of summons, if he shall have been of the age of twenty-one years or upwards at the time of his so succeeding, or at any time between the date of his attaining the said age and the time of his so applying, if he shall not have been of the said age at the time of his so succeeding; and also when and so often as any such person shall, at any time before his applying for such writ of summons have taken any oath of allegiance or obedience to any foreign prince or power, in any such case such person shall not be entitled to receive any writ of summons to the Legislative Council by virtue of such hereditary right, unless his Majesty, his heirs or successors, shall at any time think fit, by instrument under his or their sign manual, to direct that such person should be summoned to the said Council; and the Governor, Lieutenant-Governor, or person administering the Government in the said Provinces respectively, is hereby authorized and required, previous to granting such writ of summons to any person applying for the same, to interrogate such person upon oath, touching the said several particulars, before such Executive Council as shall have been appointed by his Majesty, his heirs or successors, within such Province for the affairs thereof.

Seats in Council vacated in certain cases.

VIII. Provided also, and be it further enacted by the authority aforesaid, that if any member of the Legislative Councils of either of the said Provinces respectively, shall leave such Province, and shall reside out of the same for the space of four years continually, without the permission of his Majesty, his heirs or successors, signified to such Legislative Council by the Governor, or Lieutenant-Governor, or person administering his Majesty's Government there, or for the space of two years continually without the like permission, or the permission of the Governor, Lieutenant-Governor, or person administering the Government of such Province, signified to such Legislative Council in the manner aforesaid; or if any such member shall take any oath of allegiance or obedience to any foreign prince or power, his seat in such Council shall thereby become vacant.

Hereditary rights and seats so forfeited, or vacated, to remain suspended during the lives of the parties, but on their deaths to go to the person next entitled thereto.

IX. Provided also, and be it further enacted by the authority aforesaid, that in every case where a writ of summons to such Legislative Council shall have been lawfully withheld from any person to whom such hereditary right, as aforesaid, shall have descended, by reason of such absence from the Province as aforesaid, or of his having taken an oath of allegiance or obedience to any foreign prince or power, and also in every case where the seat in such Council of any member thereof, having such hereditary right as aforesaid, shall have been vacated by reason of any of the causes hereinbefore specified, such hereditary right shall remain suspended during the life of such person unless his Majesty, his heirs or successors, shall afterwards think fit to direct that he be summoned to such Council; but that on the death of such person such right, subject to the provisions herein contained, shall descend to the person who shall next be entitled thereto, according to the course of descent limited in the letters patent by which the same shall have been originally conferred.

Seats in Council forfeited and hereditary rights extinguished for treason.

X. Provided also, and be it further enacted by the authority aforesaid, that if any member of either of the said Legislative Councils shall be attainted for treason in any Court of law within any of his Majesty's dominions, his seat in such Council shall thereby become vacant, and any such hereditary right as aforesaid then vested in such person, or to be derived to any other person through him, shall be utterly forfeited and extinguished.

Questions respecting the right to be summoned to Council, etc., to be determined as herein mentioned.

XI. Provided also, and be it enacted by the authority aforesaid, that whenever any question shall arise respecting the right of any person to be summoned to either of the said Legislative Councils respectively, or respecting the vacancy of the seat in such Legislative Council of any person having been summoned thereto, every such question shall by the Governor or Lieutenant-Governor of the Province, or by the person administering the Government there, be referred to such Legislative Council to be by the said Council heard and determined; and that it shall and may be lawful, either for the person desiring such writ of summons, or respecting whose seat such question shall have arisen, or for his Majesty's Attorney-General of such Province in his Majesty's name, to appeal from the determination of the said Council in such case to his Majesty in his Parliament of Great Britain; and that the judgment thereon of his Majesty in his said Parliament shall be final and conclusive to all intents and purposes whatever.

The Governor of the Province may appoint and remove the Speaker.

XII. And be it further enacted by the authority aforesaid, that the Governor or Lieutenant-Governor of the said Provinces respectively, or the person administering His Majesty's Government therein respectively, shall have power and authority from time to time, by an instrument under the great Seal of such Province, to constitute, appoint and remove the Speakers of the Legislative Councils of such Provinces respectively.

His Majesty may authorize the Governor to call together the Assembly,

XIII. And be it further enacted by the authority aforesaid, that for the purpose of constituting such Assembly as aforesaid in each of the said Provinces respectively, it shall and may be lawful for his Majesty, his heirs or successors, by an instrument under his or their sign manual, to authorize and direct the Governor or Lieutenant-Governor, or person administering the Government in each of the said Provinces respectively, within the time hereinafter mentioned, and thereafter from time to time as occasion shall require, in his Majesty's name and by an instrument under the Great Seal of such Province, to summon and call together an Assembly in and for such Province.

and, for the purpose of electing the members, to issue a proclamation dividing the Province into Districts, etc.

XIV. And be it further enacted by the authority aforesaid, that for the purpose of electing the members of such Assemblies respectively it shall and may be lawful for his Majesty, his heirs or successors, by an instrument under his or their sign manual, to authorize the Governor or Lieutenant-Governor of each of the said Provinces respectively, or the person administering the Government therein, within the time hereinafter mentioned, to issue a proclamation [1] dividing such Province into districts, or counties, or circles, and towns or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each of such districts, or counties, or circles, and towns or townships respectively; and that it shall also be lawful for his Majesty, his heirs or successors, to authorize such Governor or Lieutenant-Governor, or person administering the Government, from time to time to nominate and appoint proper persons to execute the office of returning-officer in each of the said

[1] The proclamations dividing Lower Canada and Upper Canada into electoral districts were issued on May 7, 1792, and July 16, 1792, respectively. (See Doughty and McArthur, pp. 72, 77.)

districts, or counties, or circles, and towns or townships respectively; and that such division of the said Provinces into districts, or counties, or circles, and towns or townships, and such declaration and appointment of the number of representatives to be chosen by each of the said districts, or counties, or circles, and towns or townships, respectively, and also such nomination and appointment of returning-officers in the same, shall be valid and effectual to all the purposes of this Act, unless it shall at any time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs, or successors.

Power of the Governor to appoint returning officers to continue two years from the commencement of this Act.

XV. Provided nevertheless, and be it further enacted by the authority aforesaid, that the provision hereinbefore contained for empowering the Governor, Lieutenant-Governor, or person administering the Government of the said Provinces respectively, under such authority as aforesaid from his Majesty, his heirs or successors, from time to time to nominate and appoint proper persons to execute the office of returning-officer in the said districts, counties, circles, and towns or townships, shall remain and continue in force in each of the said Provinces respectively for the term of two years from and after the commencement of this Act within such Province, and no longer; but subject nevertheless to be sooner repealed or varied by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs or successors.

No person obliged to serve as returning officer more than once unless otherwise provided by an Act of the Province.

XVI. Provided always, and be it further enacted by the authority aforesaid, that no person shall be obliged to execute the said office of returning-officer for any longer time than one year, or oftener than once, unless it shall at any time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs or successors.

Number of members in each Province.

XVII. Provided also, and be it enacted by the authority aforesaid, that the whole number of members to be chosen in the Province of Upper Canada shall not be less than sixteen, and the whole number of members to be chosen in Lower Canada shall not be less than fifty.

Regulations for issuing writs for the election of members to serve in the Assemblies.

XVIII. And be it further enacted by the authority aforesaid, that writs for the election of members to serve in the said Assemblies respectively shall be issued by the Governor, Lieutenant-Governor, or person administering his Majesty's Government within the said Provinces respectively, within fourteen days after the sealing of such instrument as aforesaid for summoning and calling together such Assembly, and that such writs shall be directed to the respective returning-officers of the said districts, or counties, or circles, and towns or townships, and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall at any time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs or successors; and that writs shall in like manner and form be issued for the election of members in the case of any vacancy which shall happen by the death of the person chosen, or by his being summoned to the Legislative Council of either Province, and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall at any time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs or successors; and that in the case of any such vacancy which shall happen by the death of the person chosen, or by reason of his being so summoned as aforesaid, the writ for the election of a new member shall be issued within six days after the same shall be made known to the proper officer for issuing such writs of election.

Returning officers to execute writs.

XIX. And be it further enacted by the authority aforesaid, that all and every the returning-officers so appointed as aforesaid, to whom any such writs as aforesaid shall be directed, shall, and they are hereby authorized and required duly to execute such writs.

By whom the members are to be chosen.

XX. And be it further enacted by the authority aforesaid, that the members for the several districts, or counties, or circles of the said Provinces respectively shall be chosen by the majority of votes of such persons as shall severally be possessed, for their own use and benefit, of lands or tenements within such district, or county, or circle, as the case shall be, such lands being by them held in freehold, or in fief, or in roture, or by certificate derived under the authority of the Governor and Council of the Province of Quebec, and being of the yearly value of forty shillings sterling or upwards, over and above all rents and charges payable out of or in respect of the same; and that the members for the several towns or

townships within the said Provinces respectively shall be chosen by the majority of votes of such persons as either shall be severally possessed for their own use and benefit of a dwelling house and lot of ground in such town or township, such dwelling house and lot of ground being by them held in like manner as aforesaid, and being of the yearly value of five pounds sterling or upwards, or, as, having been resident within the said town or township for the space of twelve calendar months next before the date of the writ of summons for the election, shall *bona fide* have paid one year's rent for the dwelling house in which they shall have so resided, at the rate of ten pounds sterling per annum or upwards.

Certain persons not eligible to the assemblies.

XXI. Provided always, and be it further enacted by the authority aforesaid, that no person shall be capable of being elected a member to serve in either of the said Assemblies, or of sitting and voting therein, who shall be a member of either of the said Legislative Councils to be established as aforesaid in the said two Provinces, or who shall be a minister of the Church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the Church of Rome, or under any other form or profession of religious faith or worship.

No person under 21 years of age, etc., capable of voting or of being elected;

XXII. Provided also, and be it further enacted by the authority aforesaid, that no person shall be capable of voting at any election of a member to serve in such Assembly, in either of the said Provinces, or of being elected at any such election who shall not be of the full age of twenty-one years, and a natural born subject of his Majesty, or a subject of his Majesty naturalized by Act of the British Parliament, or a subject of his Majesty having become such by the conquest and cession of the Province of Canada.

nor any person attainted for treason or felony.

XXIII. And be it also enacted by the authority aforesaid, that no person shall be capable of voting at any election of a member to serve in such Assembly in either of the said Provinces, or of being elected at any such election, who shall have been attainted for treason or felony in any Court of law within any of his Majesty's dominions, or who shall be within any description of persons disqualified by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs or successors.

Voters if required to take the following oath.

XXIV. Provided also, and be it further enacted by the authority aforesaid, that every voter before he is admitted to give his vote at any such election shall, if required by any of the candidates, or by the returning-officer, take the following oath, which shall be administered in the English or French language, as the case may require:

Oath.

*I, A. B., do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years, and that I have not voted before at this election.*

And to make oath to the particulars herein specified.

And that every such person shall also, if so required as aforesaid, make oath previous to his being admitted to vote that he is, to the best of his knowledge and belief, duly possessed of such lands and tenements, or of such a dwelling house and lot of ground, or that he has *bona fide* been so resident and paid such rent for his dwelling house as entitles him according to the provisions of this Act, to give his vote at such election for the county, or district, or circle, or for the town or township, for which he shall offer the same.

His Majesty may authorize the Governor to fix the time and place for holding elections,

XXV. And be it further enacted by the authority aforesaid that it shall and may be lawful for his Majesty, his heirs, or successors, to authorize the Governor or Lieutenant-Governor, or person administering the Government within each of the said Provinces respectively, to fix the time and place of holding such elections, giving not less than eight days' notice of such time, subject nevertheless to such provisions as may hereafter be made in these respects, by any Act of the Legislative Council and Assembly of the Province, assented to by his Majesty, his heirs, or successors.

and of holding the Sessions of the Council and Assembly, etc.

XXVI. And be it further enacted by the authority aforesaid, that it shall and may be lawful for his Majesty, his heirs, or successors, to authorize the Governor or Lieutenant-Governor of each of the said Provinces respectively, or the person administering the Government therein, to fix the places and times of holding the first and every other session of the Legislative Council and Assembly of such Province, giving due and sufficient notice thereof, and to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise, whenever he shall judge it necessary or expedient.

Council and Assembly to be called together once in twelve months, etc.

XXVII. Provided always, and be it further enacted by the authority aforesaid, that the said Legislative Council and Assembly in each of the said Provinces shall be called together once at the least in every twelve calendar months, and

that every Assembly shall continue for four years from the day of the return of the writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor or Lieutenant-Governor of the Province, or person administering his Majesty's Government therein.

And all questions therein to be decided by the majority of votes.

XXVIII. And be it further enacted by the authority aforesaid, that all questions which shall arise in the said Legislative Councils or Assemblies respectively shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal the Speaker of such Council or Assembly, as the case may be, shall have a casting voice.

No member to sit or vote until he has taken the following

XXIX. Provided always, and be it enacted by the authority aforesaid, that no member either of the Legislative Council or Assembly, in either of the said Provinces, shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath, either before the Governor or Lieutenant-Governor of such Province, or person administering the Government therein, or before some person or persons authorized by the said Governor or Lieutenant-Governor, or other person as aforesaid, to administer such oath, and that the same shall be administered in the English or French language, as the case may require:

Oath.

*I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty, King George, as lawful Sovereign of the Kingdom of Great Britain, and of these Provinces dependent on and belonging to the said Kingdom; and that I will defend him to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against his person, crown, and dignity; and that I will do my utmost endeavour to disclose and make known to his Majesty, his heirs or successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him, or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary—So help me God.*

Governor may give or withhold His Majesty's assent to bills passed by the Legislative Council and Assembly, or reserve them for His Majesty's pleasure.

XXX. And be it further enacted by the authority aforesaid, that whenever any bill, which has been passed by the Legislative Council and by the House of Assembly in either of the said Provinces respectively, shall be presented for his Majesty's assent to the Governor or Lieutenant-Governor of such Province, or person administering his Majesty's Government therein, such Governor or Lieutenant-Governor, or person administering the Government shall, and he is hereby authorized and required to declare, according to his discretion, but subject nevertheless to the provisions contained in this Act, and to such instructions as may from time to time be given in that behalf by his Majesty, his heirs or successors, that he assents to such bill in his Majesty's name, or that he withholds his Majesty's assent from such bill, or that he reserves such bill for the signification of his Majesty's pleasure thereon.

Governor to transmit to the Secretary of State copies of such bills as have been assented to, which His Majesty in Council may declare his disallowance of within two years from the receipt.

XXXI. Provided always, and be it further enacted by the authority aforesaid, that whenever any bill which shall have been so presented for his Majesty's assent to such Governor, Lieutenant-Governor, or person administering the Government, shall by such Governor, Lieutenant-Governor, or person administering the Government, have been assented to in his Majesty's name, such Governor, Lieutenant-Governor, or person as aforesaid shall, and he is hereby required, by the first convenient opportunity to transmit to one of his Majesty's principal Secretaries of State, an authentic copy of such bill so assented to; and that it shall and may be lawful, at any time within two years after such bill shall have been so received by such Secretary of State for his Majesty, his heirs or successors, by his or their Order-in-Council to declare his or their disallowance of such bill, and that such disallowance, together with a certificate under the hand and seal of such Secretary of State testifying the day on which such bill was received as aforesaid, being signified by such Governor, Lieutenant-Governor, or person administering the Government, to the Legislative Council and Assembly of such Province, or by proclamation, shall make void and annul the same, from and after the date of such signification.

Bills reserved for His Majesty's pleasure not to have any force till His Majesty's assent be communicated

XXXII. And be it further enacted by the authority aforesaid, that no such bill which shall be so reserved for the signification of his Majesty's pleasure thereon, shall have any force or authority within either of the said Provinces respectively until the Governor, or Lieutenant-Governor, or person administering the Government shall signify, either by speech or message, to the Legislative Council and Assembly of such Province, or by proclamation, that such bill has

to the Council and Assembly.

been laid before his Majesty in Council, and that his Majesty has been pleased to assent to the same; and that an entry shall be made in the journals of the said Legislative Council of every such speech, message, or proclamation; and a duplicate thereof duly attested shall be delivered to the proper officer to be kept amongst the public records of the Province; and that no such bill, which shall be so reserved as aforesaid shall have any force or authority within either of the said Provinces respectively unless his Majesty's assent thereto shall have been so signified as aforesaid, within the space of two years from the day on which such bill shall have been presented for his Majesty's assent, to the Governor, Lieutenant-Governor, or person administering the Government of such Province.

Laws in force at the commencement of this Act to continue so, except repealed or varied by it, etc.

XXXIII. And be it further enacted by the authority aforesaid, that all laws, statutes, and ordinances which shall be in force on the day to be fixed in the manner herein after directed for the commencement of this Act, within the said Provinces, or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority, and effect in each of the said Provinces respectively as if this Act had not been made, and as if the said Province of Quebec had not been divided; except in so far as the same are expressly repealed or varied by this Act, or in so far as the same shall or may hereafter by virtue of and under the authority of this Act be repealed or varied by his Majesty, his heirs, or successors by and with the consent of the Legislative Councils and Assemblies of the said Provinces respectively, or in so far as the same may be repealed or varied by such temporary laws or ordinances as may be made in the manner hereinafter specified.

Establishment of court of civil jurisdiction in each Province

XXXIV. And whereas by an ordinance [1] passed in the Province of Quebec the Governor and Council of the said Province were constituted a Court of civil jurisdiction for hearing and determining appeals in certain cases therein specified, be it further enacted by the authority aforesaid, that the Governor, or Lieutenant-Governor, or person administering the Government of each of the said Provinces respectively, together with such Executive Council as shall be appointed by his Majesty for the affairs of such Province, shall be a Court of civil jurisdiction, within each of the said Provinces respectively, for hearing and determining appeals within the same, in the like cases, and in the like manner and form, and subject to such appeal therefrom as such appeals might, before the passing of this Act, have been heard and determined by the Governor and Council of the Province of Quebec; but subject nevertheless to such further or other provisions as may be made in this behalf by any Act of the Legislative Council and Assembly of either of the said Provinces respectively, assented to by his Majesty, his heirs, or successors.

14 Geo. III, cap. 83, and

XXXV. And whereas by the above mentioned Act passed in the fourteenth year of the reign of his present Majesty it was declared that the clergy of the Church of Rome in the Province of Quebec might hold, receive, and enjoy their accustomed dues and rights,[2] with respect to such persons only as should profess the said religion; provided nevertheless that it should be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights for the encouragement of the Protestant religion and for the maintenance and support of a Protestant clegy within the said Province as he or they should from time to time think necessary and expedient: And whereas by his Majesty's Royal instruction,[3] given under his Majesty's Royal sign manual on the third of January in the year of our Lord one thousand seven hundred and seventy-five to Guy Carleton, Esquire, now Lord Dorchester, at that time his Majesty's Captain-General and Governor in Chief in and over his Majesty's Province of Quebec, his Majesty was pleased amongst other things to direct that no incumbent professing the religion of the Church of Rome, appointed to any parish in the said Province, should be entitled to receive any tythes for lands or possessions occupied by a Protestant, but that such tythes should be received by such persons as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor in Chief in and over his Majesty's said Province of Quebec, should appoint, and should be reserved in the hands of his Majesty's Receiver-General of the said Province for the support of a Protestant clergy in his Majesty's said Province, to be actually resident within the same, and not otherwise, according to such directions as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor in Chief in and over his Majesty's said Province, should

Instructions of January 3rd, 1775, to Guy Carleton, Esq., etc., and

See No. XXXVI.

[2] See Quebec act, § v (No. XXXI).

See Carleton's instructions for 1775, Section 21, § 5 (No. XXXV).

receive from his Majesty in that behalf; and that in like manner all growing rents and profits of a vacant benefice should during such vacancy be reserved for and applied to the like uses; and whereas his Majesty's pleasure has likewise been signified to the same effect in his Majesty's Royal instructions given in like manner to Sir Frederick Haldimand, Knight of the most honorable Order of the Bath, late his Majesty's Captain-General and Governor in Chief in and over his Majesty's said Province of Quebec; and also in his Majesty's Royal instructions given in like manner to the said Right Honorable Guy Lord Dorchester, now his Majesty's Captain-General and Governor in Chief in and over his Majesty's said Province of Quebec; be it enacted by the authority aforesaid that the said declaration and provision contained in the said above mentioned Act, and also the said provision so made by his Majesty in consequence thereof by his instructions above recited, shall remain and continue to be of full force and effect in each of the said two Provinces of Upper Canada and Lower Canada respectively, except in so far as the said declaration or provisions respectively, or any part thereof, shall be expressly varied or repealed by any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by his Majesty, his heirs or successors, under the restriction hereinafter provided.

Instructions to Sir Frederick Haldimand,

and to Lord Dorchester recited,

and the declaration and provisions therein respecting the clergy of the Church of Rome to continue in force.

XXXVI. And whereas his Majesty has been graciously pleased, by message[1] to both Houses of Parliament, to express his Royal desire to be enabled to make a permanent appropriation of land in the said Provinces for the support and maintenance of a Protestant clergy within the same, in proportion to such lands as have been already granted within the same by his Majesty: And whereas his Majesty has been graciously pleased by his said message further to signify his Royal desire that such provision may be made with respect to all future grants of land within the said Provinces respectively as may best conduce to the due and sufficient support and maintenance of the Protestant clergy within the said Provinces, in proportion to such increase as may happen in the population and cultivation thereof; therefore, for the purpose of more effectually fulfilling his Majesty's gracious intentions as aforesaid, and of providing for the due execution of the same in all time to come, be it enacted by the authority aforesaid that it shall and may be lawful for his Majesty, his heirs or successors, to authorize the Governor, or Lieutenant-Governor of each of the said Provinces respectively, or the person administering the Government therein, to make from and out of the lands of the Crown within such Provinces such allotment and appropriation of lands for the support and maintenance of a Protestant clergy within the same as may bear a due proportion to the amount of such lands within the same as have at any time been granted by or under the authority of his Majesty: And that, whenever any grant of lands within either of the said Provinces shall hereafter be made by or under the authority of his Majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands for the above mentioned purpose, within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit; and that no such grant shall be valid or effectual unless the same shall contain a specification of the lands so allotted and appropriated, in respect of the lands to be thereby granted; and that such lands so allotted and appropriated shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

His Majesty's message to Parliament recited.

His Majesty may authorize the Governor to make allotments of land for the support of a Protestant clergy in each Province;

XXXVII. And be it further enacted by the authority aforesaid that all and every the rents, profits, or emoluments, which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant clergy within the Province in which the same shall be situated, and to no other purpose whatever.

and the rents arising from such allotment to be applicable to that purpose solely.

XXXVIII. And be it further enacted by the authority aforesaid that it shall and may be lawful for his Majesty, his heirs and successors, to authorize the Governor or Lieutenant-Governor of each of the said Provinces respectively, or the person administering the Government therein, from time to time, with the advice of such Executive Council as shall have have been appointed by his Majesty, his heirs or successors, within such Province for the affairs thereof, to

His Majesty may authorize the Governor with the advice of the Executive Council, to erect parsonages and endow them

[1] For George III's message to parliament February 25, 1791, see Hansard, vol. xxviii, p. 1271.

constitute and erect within every township or parish which is now or hereafter may be formed, constituted or erected within such Province, one or more parsonage or rectory, or parsonages or rectories, according to the establishment of the Church of England; and from time to time by instrument under the great seal of such Province to endow every such parsonage or rectory with so much or such a part of the lands so allotted and appropriated as aforesaid, in respect of any lands within such township or parish, which shall have been granted subsequent to the commencement of this Act, or of such lands as may have been allotted and appropriated for the same purpose, by or in virtue of any instruction which may be given by his Majesty in respect of any lands granted by his Majesty before the commencement of this Act, as such Governor, Lieutenant-Governor, or person administering the Government shall, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such township or parish.

and the Governor to present incumbents to them, who are to enjoy the same, as incumbents in England.

XXXIX. And be it further enacted by the authority aforesaid, that it shall and may be lawful for his Majesty, his heirs or successors, to authorize the Governor, Lieutenant-Governor, or person administering the Government of each of the said Provinces respectively, to present to every such parsonage or rectory an incumbent or minister of the Church of England, who shall have been duly ordained according to the rites of the said Church, and to supply from time to time such vacancies as may happen therein; and that every person so presented to any such parsonage or rectory shall hold and enjoy the same, and all rights, profits, and emoluments thereunto belonging or granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties, as the incumbent of a parsonage or rectory in England.

Presentations to parsonages and enjoyment of them to be subject to the jurisdiction granted to the Bishop of Nova Scotia, etc.

XL. Provided always, and be it further enacted by the authority aforesaid, that every such presentation of an incumbent or minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits, and emoluments thereof, by any such incumbent or minister, shall be subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority, which have been lawfully granted by his Majesty's Royal letters patent to the Bishop of Nova Scotia,[1] or which may hereafter by his Majesty's Royal authority be lawfully granted or appointed to be administered and executed within the said Provinces, or either of them respectively, by the said Bishop of Nova Scotia, or by any other person or persons, according to the laws and canons of the Church of England which are lawfully made and received in England.

Provisions respecting the allotment of lands for the support of a Protestant clergy, etc., may be varied or repealed by the Legislative Council and Assembly.

XLI. Provided always, and be it further enacted by the authority aforesaid, that the several provisions hereinbefore contained, respecting the allotment and appropriation of lands for the support of a Protestant clergy within the said Provinces, and also respecting the constituting, erecting, and endowing parsonages or rectories within the said Provinces, and also respecting the presentation of incumbents or ministers to the same, and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same shall be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, his heirs or successors under the restriction hereinafter provided.

Acts of the Legislative Council and Assembly containing provisions to the effect herein mentioned to be laid before Parliament previous to receiving His Majesty's assent, etc.

XLII. Provided nevertheless, and be it further enacted by the authority aforesaid, that whenever any Act or Acts shall be passed by the Legislative Council and Assembly of either of the said Provinces, containing any provisions to vary or repeal the above recited declaration and provision contained in the said Act passed in the fourteenth year of the reign of his present Majesty; or to vary or repeal the above recited provision contained in his Majesty's Royal instructions given on the third day of January in the year of our Lord one thousand, seven hundred and seventy-five to the said Guy Carleton, Esquire, now Lord Dorchester; or to vary or repeal the provisions herein before contained for continuing the force and effect of the said declaration and provisions; or to vary or repeal any of the several provisions herein before contained respecting the allotment and appropriation of lands for the support of a Protestant clergy within the said Provinces; or respecting the constituting, erecting, or endowing parsonages or rectories within the said Provinces; or respecting the presentations

[1] For the instructions providing for such jurisdiction, see Shortt and Doughty, *op. cit.*, pp. 838 ff.

of incumbents or ministers to the same; or respecting the manner in which such incumbents or ministers shall hold and enjoy the same: And also that whenever any Act or Acts shall be so passed, containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any religious form or mode of worship; or shall impose or create any penalties, burthens, disabilities, or disqualifications in respect of the same; or shall in any manner relate to or affect the payment, recovery, or enjoyment of any of the accustomed dues or rights therein before mentioned; or shall in any manner relate to the granting, imposing or recovering any other dues or stipends, or emoluments whatever, to be paid to or for the use of any minister, priest, ecclesiastic, or teacher according to any religious form or mode of worship, in respect of his said office or function; or shall in any manner relate to or affect the establishment or discipline of the Church of England amongst the ministers and members thereof within the said Provinces or shall in any manner relate to or affect the King's prerogative touching the granting of waste lands of the Crown within the said Provinces; every such Act or Acts shall, previous to any declaration or signification of the King's assent thereto, be laid before both Houses of Parliament in Great Britain; and that it shall not be lawful for his Majesty, his heirs or successors, to signify his or their assent to any such Act or Acts, until thirty days after the same shall have been laid before the said houses, or to assent to any such Act or Acts in case either House of Parliament shall within the said thirty days address his Majesty, his heirs or successors, to withhold his or their assent from such Act or Acts; and that no such Act shall be valid or effectual to any of the said purposes within either of the said Provinces unless the Legislative Council and Assembly of such Province shall, in the session in which the same shall have been passed by them, have presented to the Governor, Lieutenant-Governor, or person administering the Government of such Province, an address or addresses specifying that such Act contains provisions for some of the said purposes herein before specially described, and desiring that, in order to give effect to the same, such Act should be transmitted to England without delay for the purpose of being laid before Parliament previous to the signification of his Majesty's assent thereto.

Lands in Upper Canada to be granted in free and common soccage and also in Lower Canada if desired.

XLIII. And be it further enacted by the authority aforesaid, that all lands which shall be hereafter granted within the said Province of Upper Canada shall be granted in free and common soccage, in like manner as lands are now holden in free and common soccage in that part of Great Britain called England; and that in every case where lands shall be hereafter granted within the said Province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted; but subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage, as may be established by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province.

Persons holding lands in Upper Canada may have fresh grants.

XLIV. And be it further enacted by the authority aforesaid, that if any person or persons holding lands in the said Province of Upper Canada by virtue of any certificate of occupation derived under the authority of the Governor and Council of the Province of Quebec, and having power and authority to alienate the same, shall at any time from and after the commencement of this Act surrender the same into the hands of his Majesty, his heirs or successors, by petition to the Governor, or Lieutenant-Governor, or person administering the Government of the said Province, setting forth that he, she or they, is or are desirous of holding the same in free and common soccage, such Governor, or Lieutenant-Governor, or person administering the Government shall thereupon cause a fresh grant to be made to such person of such lands to be holden in free and common soccage.

Such fresh grants not to bar any right or title to the lands.

XLV. Provided nevertheless, and be it further enacted by the authority aforesaid, that such surrender and grant shall not avoid or bar any right or title to any such lands so surrendered, or any interest in the same, to which any person or persons other than the person or persons surrendering the same shall have been entitled either in possession, remainder, or reversion, or otherwise, at the time of such surrender; but that every such surrender and grant shall be made subject to such right, title, and interest, and that every such right, title, or interest shall be as valid and effectual as if such surrender and grant had never been made.

18 Geo. III, cap. 12, recited.

XLVI. And whereas by an Act [1] passed in the eighteenth year of the reign of his present Majesty, intituled "An Act for removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain in any of the Colonies, Provinces, and Plantations in North America and the West Indies; and for repealing so much of an Act made in the seventh year of his present Majesty as imposes a duty on tea imported from Great Britain into any Colony or Plantation in America, or relates thereto," it has been declared "that the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of his Majesty's Colonies, Provinces, and Plantations in North America, or the West Indies, except only such duties as it may be expedient to impose for the regulation of commerce, the net produce of such duties to be always paid and applied to and for the use of the Colony, Province, or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts or General Assemblies of such Colonies, Provinces, or Plantations are ordinarily paid and applied": And whereas it is necessary for the general benefit of the British Empire, that such power of regulation of commerce should continue to be exercised by his Majesty, his heirs or successors, and the Parliament of Great Britain, subject nevertheless to the conditions herein before recited with respect to the application of any duties which may be imposed for that purpose: Be it therefore enacted by the authority aforesaid, that nothing in this Act contained shall extend, or be construed to extend, to prevent or affect the execution of any law which hath been or shall at any time be made by his Majesty, his heirs or successors, and the Parliament of Great Britain, for establishing regulations or prohibitions, or for imposing, levying, or collecting duties for the regulation of navigation, or for the regulation of the commerce to be carried on between the said two Provinces,[2] or between either of the said Provinces and any other part of his Majesty's dominions, or between either of the said Provinces and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give to his Majesty, his heirs or successors, any power or authority, by and with the advice and consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such law or laws or any part thereof, or in any manner to prevent or obstruct the execution thereof.

This Act not to prevent the operation of any Act of Parliament establishing prohibitions or imposing duties for the regulation of navigation and commerce etc.

Such duties to be applied to the use of the respective Provinces.

XLVII. Provided always, and be it enacted by the authority aforesaid, that the net produce of all duties which shall be so imposed shall at all times hereafter be applied to and for the use of each of the said Provinces respectively, and in such manner only as shall be directed by any law or laws which shall be made by his Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of such Province.

His Majesty in Council to fix and declare the commencement of this Act, etc.

XLVIII. And whereas, by reason of the distance of the said Provinces from this country, and of the change to be made by this Act in the Government thereof, it may be necessary that there should be some interval of time between the notification of this Act to the said Provinces respectively, and the day of its commencement within the said Provinces respectively; be it therefore enacted by the authority aforesaid, that it shall and may be lawful for his Majesty, with the advice of the Privy Council, to fix and declare, or to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare the day of the commencement of this Act within the said Provinces respectively, provided that such day shall not be later than the thirty-first day of December, in the year of our Lord one thousand seven hundred and ninety-one.

Time for issuing the writs of summons and election, etc., not to be later than 31st December, 1792.

XLIX. And be it further enacted by the authority aforesaid, that the time to be fixed by his Majesty, his heirs or successors, or under his or their authority by the Governor, Lieutenant-Governor, or person administering the Government in each of the said Provinces respectively, for issuing the writs of summons and election, and calling together the Legislative Councils and Assemblies of each of the said Provinces respectively, shall not be later than the thirty-first day of December, in the year of our Lord one thousand seven hundred and ninety-two.

[1] See No. XXXIX.

[2] Grave disputes arose between the two provinces over duties on goods imported via the St. Lawrence. These disputes led to the passing of the Canada Trade Act by the British parliament (3 George IV, c. 119). See Bradshaw, F. *Self-Government in Canada* (London, n.d.).

L. Provided always, and be it further enacted by the authority aforesaid, that during such interval as may happen between the commencement of this Act within the said Provinces respectively, and the first meeting of the Legislative Council and Assembly of each of the said Provinces respectively, it shall and may be lawful for the Governor or Lieutenant-Governor of such Province, or for the person administering the Government therein, with the consent of the major part of such Executive Council as shall be appointed by his Majesty for the affairs of such Province, to make temporary laws and ordinances for the good government, peace, and welfare of such Province, in the same manner and under the same restrictions as such laws or ordinances might have been made by the Council for the affairs of the Province of Quebec constituted by virtue of the above mentioned Act of the fourteenth year of the reign of his present Majesty; and that such temporary laws shall be valid and binding within such Province until the expiration of six months after the Legislative Council and Assembly of such Province shall have been first assembled by virtue of and under the authority of this Act; subject nevertheless to be sooner repealed or varied by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the said Legislative Council and Assembly.

Between the commencement of this Act and the first meeting of the Legislative Council and Assembly, temporary laws may be made.

# FIFTH PERIOD

## 1791–1840

# FIFTH PERIOD

## 1791–1840

The period of Canadian constitutional history after the passing of the Constitutional act, under which the province of Quebec was divided into two provinces, up to the act of Union of 1840 which reunited them, is one of the most complicated. The documents are almost endless, and the movement of events with the causes behind them is so full of minute detail that it is difficult to trace the issues at stake and to select documents. As a consequence it has been found impossible in this introductory note to refer to the exact points which the documents selected illustrate. The broad facts of the history, almost in the form of a chronicle, can be read in F. Bradshaw, *Self Government in Canada, and how it was achieved*, pp. 46–117 (London, n.d.). On the other hand, there are certain generalizations which it is possible to make. These will illustrate the difficulties of the period and the story of constitutional development.

First, difficulties arose early over the question of supply and continued to disturb each province. The governor had control over certain crown-revenues, and he could always draw on the military chest, which was regularly replenished by the British government. The assembly had control only over such moneys as were raised by provincial legislation. Thus the crown in the Canadas was frequently able to carry on the administration without a vote of supply. The history of the period is full of illustrations of this constitutional difficulty, and as long as the crown enjoyed such financial independence there was a farcical element in representative institutions. This then was one of the broad issues. It is true, as a study of the documents will show, that the protagonists of popular control were often unbalanced extremists; yet behind the almost wearisome iteration of their demands there lay the vital constitutional principle that control over appropriation is essential to any real form of self-government and of representative institutions.

Secondly, there was in the Constitutional act no statement of the respective legislative spheres which belonged to the British and provincial parliaments. A superficial reading of the act is sufficient to prove that there were bound to be clashes. In Lower Canada, the assembly began with petitions for the redress of grievances; but when the British government turned a deaf ear to these petitions, which apparently it alone could effectively answer, the assembly passed from point to point until it claimed the power of altering the constitution. This difficulty erected a second barrier between the crown and the popular house.

Thirdly, the executive had no responsibility to the houses of assembly. The difficulty was one of linking the executive authority with the elected chambers. As a matter of fact no solution to that difficulty was found within these years. The executive was financially and, worse still, constitutionally independent. That there was a malignant disease, every one seemed to know, but no one diagnosed it properly, least of all the houses of assembly; and the various cures suggested during the period, such as reuniting the provinces, or a federation of British North America, or an elective legislative council, contained in reality no true cure. The houses of assembly talked

violently and grandiloquently of 'responsible government', and in trying to get it, without until late in the period understanding what it implied, they frequently overstepped constitutional limits and were dissolved time after time. Constitutionally, of course, the governor was as much within his rights in dissolving them as the king would be in England in dissolving parliament. There was, however, a vital point of difference. The king would act on the advice of responsible ministers and his act would be of nebulous if regal neutrality. In Canada, on the other hand, the governor had no responsible ministers, and he was driven to act in the spirit of a political party leader. Frequently the executive and legislative councils were used by the crown as bulwarks against the popular assemblies, and almost generally appointments to them were confined to those who supported the governor's administration. The vitiating principle constitutionally was that of an irresponsible executive.

Reference has already been made to various proposed remedies. With no final decision on the actual principle of government, all suggestions were heavy with impotency. It is, of course, quite easy for us to see where the constitution of 1791 was weak, but at the time no one could see how it was possible to reconcile cabinet and responsible government in Canada with the sovereignty of the crown. Not a few, however, saw that the agitation in Canada implied responsible government, and faced it at the moment with a *non possumus*. It was only after the futile rebellions in both provinces that any broader vision came. Two[1] quotations from Lord Durham's *Report* form the best commentary on the period: 'Representative government coupled with an irresponsible executive . . . . constant collision between the branches of the government; the same abuse of the powers of the representative bodies, owing to the anomaly of their position; aided by the want of good municipal institutions, and the same constant interference of the imperial administration in matters which should be left wholly to the provincial governments.'

'I know not how it is possible to secure that harmony in any other way than by administering the government on those principles which have been found perfectly efficacious in Great Britain. I would not impair a single prerogative of the crown; on the contrary, I believe that the interests of the people of these colonies require the protection of prerogatives, which have not hitherto been exercised. But the crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence.'

The period closes with lord Sydenham's work. Liberal selections are made from his dispatches. He began the new era, and if he only succeeded in stamping his own strong personality on the government, yet he made possible the brilliant constitutional experiment under Bagot, the final failure of the old system under Metcalfe, and the successful rule of lord Elgin, under whom full responsible government was set up. For a discussion of the constitutional development of the period, see Kennedy, W.P.M., *The Constitution of Canada*, pp. 88-166 (Oxford 1922).

[1] *Lord Durham's Report* (edited Lucas, Oxford 1912), vol. ii, pp. 194, 278.

## LV

## AN ACT INTRODUCING ENGLISH CIVIL LAW INTO UPPER CANADA, IN THE THIRTY-SECOND YEAR OF GEORGE THE THIRD, 1792.

[Trans.: Doughty and McArthur, *Constitutional Documents* (Canadian Public Archives, 1914).]

*An ACT to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act*[1] *for making more effectual Provision for the Government of the Province of Quebec, in NORTH AMERICA," and to introduce the English law, as the Rule of Decision in all matters of Controversy, relative to Property and Civil Rights.*

Whereas, by an Act passed in the fourteenth year of his present Majesty, intituled, "An Act for making more effectual provision for the Government of the Province of *Quebec*, in *North America*," it was, among other things provided, "That in all matters of controversy relative to property and civil rights, resort should be had to the Laws of *Canada* as the rule for the decision of the same;" such provision being manifestly and avowedly intended for the accommodation of His Majesty's *Canadian* subjects: and whereas, since the passing of the Act aforesaid, that part of the late Province of *Quebec*, now comprehended within the Province of *Upper Canada*, having become inhabited principally by *British* subjects, born and educated in countries where the *English* Laws were established, and who are unaccustomed to the Laws of *Canada*, it is inexpedient that the provision aforesaid contained in the said Act of the fourteenth year of His present Majesty, should be continued in this Province—Be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of *Upper Canada*, constituted and assembled by virtue of and under the authority of an Act[2] passed in the Parliament of *Great Britain*, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign intituled, 'An Act for making more effectual provision for the Government of the Province of *Quebec*, in *North America*,' and to make further provision for the Government of the said Province," and by the authority of the same, "That from and after the passing of this Act, the said provision contained "in the said Act of the fourteenth year of his present Majesty, be, and the same "is hereby repealed; and the authority of the said Laws of *Canada*, and every "part thereof, as forming a rule of decision in all matters of controversy relative "to property and civil rights, shall be annulled, made void and abolished, "throughout this Province, and that the said Laws, nor any part thereof as such, "shall be of any force or authority within the said Province nor binding on any "of the inhabitants thereof."

II. *Provided always, and be it Enacted by the Authority aforesaid*, That nothing in this Act shall extend to extinguish, release or discharge, or otherwise to affect any existing right, lawful claim or incumbrance, to and upon any lands, tenements or hereditaments within the said Province, or to rescind or vacate, or otherwise to affect any contract or security already made and executed conformably to the usages prescribed by the said Laws of *Canada*.

III. *And be it further Enacted by the Authority aforesaid*, That from and after the passing of this Act, in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of *England* as the rule for the decision of the same.

IV. *Provided always, and be it Enacted by the Authority aforesaid*, That nothing in this Act shall extend, or be construed to extend, to repeal or vary any of the ordinances made and passed by the Governor and Legislative Council of the Province of *Quebec*, previous to the division of the same into the Provinces of *Upper* and *Lower Canada*, otherwise than as they are necessarily varied by the provisions herein mentioned.

V. *And be it further Enacted by the Authority aforesaid*, That all matters relative

[1] The Quebec Act of 1774 (see XXXI).

[2] See No. LIV.

to testimony and legal proof in the investigation of fact, and the forms thereof, in the several Courts of Law and Equity within this Province, be regulated by the rules of evidence established in *England*.

VI. *Provided always, and be it Enacted by the Authority aforesaid*, That nothing in this Act contained, shall vary, or interfere, or be construed to vary or interfere with any of the subsisting provisions respecting ecclesiastical rights and dues within this Province or with the forms of proceeding in civil actions, or the jurisdiction of the Courts already established, or to introduce any of the Laws of *England* respecting the maintenance of the poor, or respecting bankrupts.

## LVI

## AN ACT ESTABLISHING TRIAL BY JURY IN UPPER CANADA, IN THE THIRTY-SECOND YEAR OF GEORGE THE THIRD, 1792.

[Trans.: Doughty and McArthur.]

*An Act to Establish Trials by Jury.*

WHEREAS, the Trial by Jury has been long established and approved in our mother country, and is one of the chief benefits to be obtained by a free Constitution—Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of *Upper Canada*, constituted and assembled by virtue of and under the authority of an Act [1] passed in the Parliament of *Great Britain*, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign intituled 'An Act for making more effectual provision for the Government of the Province of *Quebec*, in *North America*,' and to make further provision for the Government of the said Province," and by the authority of the same, That from and after the first day of December, in this present year of our Lord, One Thousand Seven Hundred and Ninety-Two, all and every issue and issues of fact, which shall be joined in any action, real, personal or mixed, and brought in any of His Majesty's Courts of Justice within the Province aforesaid, shall be tried and determined by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues, which Jurors shall be summoned and taken conformably to the Law and custom of *England*.

II. Provided always, and be it further Enacted by the Authority aforesaid, That nothing herein contained shall prevent, or be construed to prevent the said Jurors, in all cases where they shall be so minded, from bringing in a special verdict.

## LVII

## RICHARDSON TO ALEXANDER ELLICE [2]

[Trans.: *Canadian Historical Review*, iv, pp. 258 ff.]

Montreal 16th Feb'y, 1793.

Dear Sir

As you will no doubt be anxious to know the Proceedings of our Legislature I shall endeavour to give you the Outlines, from which you will see that the prospect of future utility from their deliberations is as slender, as the past has been unproductive of any one desirable regulation. Unhappily the Session commenced with a determined spirit of Party amongst the French members, for they had a private meeting, at which it was decided that an Englishman should on no account be elected Speaker.

We wished to conciliate and be moderate, and that the choice should fall on whoever might be best qualified to fill the Chair, from ability, habits of public business, and knowledge in both Languages, without distinction of Country. For this purpose three Grant, McGill and Jordan, were proposed, of which they might select one the most consonant to the general wish, but all was to no purpose, right or wrong, a Canadian must be the man, no matter however ill qualified; and the Election fell on a Mr. Panet, a Quebec Lawyer, whose ideas and talents were

[1] See No. LIV.

[2] For an important note on this letter see Soward, F. H., 'The First Assembly of Lower Canada' (*Canadian Historical Review*, iv, pp. 258 ff.).

never calculated for anything beyond the quibble routine and formality of a Court of Common Pleas, such as this Country has hitherto experienced.

The same principle which induced the first Out of Door Meeting, has hitherto governed all their proceedings. Everything is settled out of the House, they come down with matters the most absurd, cut and dry; and all the purpose the English Representation has as yet answered, is exposing the evil tendency of such conduct, but to no effect; as we may argue and reason until grey headed, without producing a convert amongst those who are predetermined agt. conviction. Our time has hitherto been principally occupied in framing Rules of Proceeding, and getting into some system of organization. Two measures only of real importance have undergone a decision, exclusive of *that* above mentioned. The second object was the establishment of a quorum to do business. They proposed 34—we demonstrated the impossibility of proceeding with so large a number, and that 26 should be the utmost extent, yet all was fruitless, 34 was carried, and has been persisted in, against common sense; altho' we have daily and hourly experience of its impeding business, as we can hardly ever keep together so large a number. No cause can be assigned for such obstinacy, but that being suspicious of their own patriotism and assiduity; they are afraid if the number should be 26, the English would be more punctual in attendance than them, and thereby obtain a majority. The next question of Magnitude; which was indeed a preliminary one to the proceeding on real business, was that of Language; that is to say, whether English or French should be the Legal Text of the Laws to be enacted.

We all agreed that the Laws should be promulgated in both, but that the *English* being the Language of the Empire, should of course be the Text in the last resort, in case of difference of opinion arising in the Construction of Acts. In vain did we prove, that this had been the immemorial Practise in the British and indeed every other Empire, that it had uniformly been so here since the Cession—that it was necessary to the sovereignty and unity of the Nation, and of real utility to this Province, as a stimulus to acquire the Language of the Mother Country, and have a gradual operation in assimilating us to her, by banishing these unhappy distinctions, which the English part of the community wished buried in oblivion, but the Leaders of the Canadians seemed determined to keep up and even augment. It was like talking to the Waves of the Sea—after two days debate upon this question brought on under a variety of shapes, we were foiled in each, and it is now determined (as far as this illegal and usurped Power of the House of Assembly can do it) that all Laws relative to Property and Civil Rights may be introduced in either Language, and to be translated into the other before they can have a formal first Reading, but the French in either case to be considered the Legal Text—The English to be the Text of Acts relative to the Criminal Law, or Protestant Clergy—objects of no importance, as the Act of Parliament has happily left little in our Power on these heads.

The consequence of so extraordinary a decision will be, that the Council will probably reject the French Text, and if that is not the case, the Gov't certainly must, as an English Sovereign has no authority to sanction Laws in a Foreign Language. The functions of Gov't will therefore probably be stopt—a prorogation or dissolution must ensue—and a new act take place. The division of the Province, is now, if possible, more manifestly injurious than before. I fear there are two Parties amongst the French —one obnoxious to the New Constitution, as they opposed our procuring it -the other more dangerous as being infected with the detestable principles now prevalent in France. These being my fears, my hopes of course are slender—still, as questions will arise on which they will split, it will give the English (who have no wish but the happiness of this country as a British Colony) a preponderance.

A circumstance has occurred which has made much noise and of which I am unfortunately the object. Debonne introduced his motion regarding the Language with a Preface containing his Reasons -the House admitted this Preface on the Journal, notwithstanding the tendency of such to impede business, by loading the Journals, was manifest. Next day I sat down, and with a view of exposing this absurdity, and also to counteract his intention, wrote 8 folio pages very close, containing part of my own speech the day before, with some ideas borrowed from others, which I introduced as a Preface to a motion in favor of the English Text.

The motion of course was lost, but it sickened the House so completely of Prefaces, that an unanimous vote passed to abolish them in future.

As I treated the subject with great freedom, great offence was taken by some, and a Committee was app'd to inspect the Translation, for the purpose of bringing me to the Bar. I was firm and conscious I did nothing but what Parliam'y usage warranted. The consequence was, after out of door vapouring, it within vanished into smoke—as they Resolved it should not be ent'd on the Journals, but remain on the Files of the House.

A motion was lately brot. forward to adjourn 20 days viz. to the 25th Inst. We opposed it as unconstitutional, being in fact a prorogation—yet so ignorant are they of the British Const'n or so perverse, that it was carried without any communication thereof to the Gov'r or Council. In consequence of this I am now here, and return in a few days. Another measure equally improper was carried; an address to His Exc'y to appoint a French Clerk and recommend'g one for that purpose. This was opposed as a manifest incroachment on the Royal prerogative—as the appointment is in the Kings Representative, and a recommendation only an injunction under another aspect—besides, that it was asking him to undo what he had already done, under the Great Seal, viz: Commissioning Sam'l Phillips as Principal Clerk—and that through him deputations should be given, if additional assistance was necessary. I hope this will do good, and draw from Gov'r Clarke something that will remind them of their duty.

Several Bills have been introduced—but are in no forwardness—a very desirable alteration regarding the Courts, has been submitted to us, by desire of his Majesty's Ministers. Nothing can be so irksome as the situation of the English members—without numbers to do any good—doomed to the necessity of combating the absurdities of the majority, without a hope of success—were I rid of it, no consideration would induce me to accept again of such a trust—but as I am in, I am determined to give my opinion boldly for such measures as in my conscience I shall think really calculated to do this Province a service, under the relation it stands in as a part of the B. Empire. I am persuaded—if the House is not dissolved—the English will in the end be the most popular—as facts will speak for themselves, and gradually remove prejudices, interestedly fomented. With my best respects to Mrs. Ellice and all Friends—

I remain with great respect and truth
Your assured, and much obliged
Servant
JOHN RICHARDSON.

## LVIII

## EXTRACTS FROM THE RULES AND REGULATIONS OF THE HOUSE OF ASSEMBLY, LOWER CANADA, 1793

[Trans.: Doughty and McArthur.]

### BILLS

Resolved:

III. That Bills relative to the criminal laws of England in force in this province, and to the rights of the Protestant clergy, as specified in the Act of the 31st year of his Majesty, chap. 31,[1] shall be introduced in the English language; and the Bills relative to the Laws, customs, usages and civil rights of this Province, shall be introduced in the French language, in order to preserve the unity of the texts.

IV. That such Bills as are presented shall be put into both languages, that those in English be put into French, and those presented in French be put into English by the clerk of the House or his Assistants, according to the directions they may receive, before they be read the first time—and when so put shall also be read each time in both languages—well understood that each Member has a right to bring in any Bill in his own language, but that after the same shall be translated, the text shall be considered to be that of the language of the law to which said Bill hath reference.

### RULES RELATIVE TO THE INTRODUCTION OF PRIVATE BILLS, PASSED IN THE HOUSE THE 19TH APRIL, 1793

VIII. That all aids and supplies granted to his Majesty by the Legislation of Lower Canada are the sole gift of the Assembly of this Province, and all Bills for

[1] See No. LIV.

granting such aids and supplies, ought to begin with the Assembly, as it is the undoubted right of the Assembly to direct, limit, and appoint in all such Bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Legislative Council.[1]

## LIX

### SIMCOE TO PORTLAND [2]

[Trans.: Doughty and McArthur.]

Kingston, Upper Canada,
December 21st, 1794.

My Lord Duke,

In the present situation of Affairs in this Country, I beg to offer for Your Grace's immediate Consideration some important Objects which will be affected by the Arrangement now under Contemplation between His Majesty and The United States; these Objects relate entirely to the civil Government.

A Principle on which I have considered this Government as most wisely established, and which I have never lost sight of in its Administration, has been to render the Province as nearly as may be a perfect image and transcript of the British Government and Constitution.[3] In the pursuance of this Object and in order to give weight and respectability to the Legislative Council, which his Majesty and the Parliament had constituted as a Branch of Government, I thought it proper, having divided the districts into Counties to create *Lieutenants*, selecting them where practicable from the Legislative Counsellors and giving to the Lieutenants as nearly as circumstances would admit, the appointments or recommendation of the Magistrates, and the nomination of the Officers of the Militia, as stated in the Circular Letter,[4] I beg to enclose to Your Grace—I have reason to believe this arrangement will in due Progress answer the intention.

The Towns of Kingston and that on the River Niagara from their situation must be places of great resort. I therefore beg to submit to Your Grace, That I think, It would be for the public Interest and the King's benefit, that These places should be *incorporated* and named the Cities of *Kingston* and *Niagara*; I should propose that the Corporation should consist of a Mayor and six Aldermen, Justices of the Peace ex officio, and a competent number of Common Council, to be originally appointed by the Crown, and that the succession to vacant seats might be made in such a manner as to render the Elections as *little popular* as possible; meaning such Corporations to tend to the support of the Aristocracy of the Country.

I should propose that these Corporations should have maritime Jurisdiction, if such shall either at present or in *future be necessary* to take place on the Lakes and River St. Lawrence—The whole Jurisdiction of Lake Ontario might well be divided between Niagara and Kingston and the intermediate Port of York.

The St. Lawrence might be divided between Kingston and Cornwall or New Johnstown—Erie might be divided between Niagara and the Post to be taken near to Long Point. From thence the Jurisdiction of Long Point, might extend to the Isle Bois blanc, and from thence, that of Chatham might begin and terminate at Cabots Head (Pennatangushene) or *Gloucester* should comprehend all the Maritime Jurisdiction beyond that on Lake Huron and Superior and the North Western territory.

It also appears, and possibly more eminently necessary, that I should observe to Your Grace, the propriety of establishing, probably by Treaty with the United States, some law to prevent Criminals of a certain description finding refuge in His Majesty's dominions and those of the States, respectively. It appears to me that a vigilant Police is most necessary on the limits of the two Countries for that express purpose; and perhaps, It may be proper to enact stricter Laws on this Subject, and applicable to Particular Spots, that might not be justifiable or necessary to be extended over the other parts of the Province. The straits of Niagara and the Port of Kingston are the general places at which strangers enter

[1] This is one of the earliest attempts to draw up a method of parliamentary procedure, and to assert the sole right of the assembly to vote money.

[2] This dispatch throws an interesting light on some of Simcoe's characteristic enthusiasms in Upper Canada. (See Scott, D. C., *John Graves Simcoe*, Oxford, 1926.) Portland was appointed secretary of state for the home department in July, 1794.

[3] This is the famous phrase used by Simcoe in proroguing the first session of the Upper Canadian legislature (*Ontario Archives Reports*, 1909, p. 18).

[4] The letter is in Doughty and McArthur, pp. 198 ff.

the Province, and where People leave it, It seems therefore, that establishing a Corporation at these places with adequate jurisdiction may be of public Service in these respects.

Great Britain from its insular situation (as far as I recollect) affords no examples of *English* laws being applicable to boundaries respecting a foreign Neighbour; and in particular, of communications by water; a division on which must form such a boundary. The term debateable land, when England and Scotland were separate Kingdoms seems to support the propriety of my wish that so soon as possible the Laws may define and comprehend for the purposes of internal Government both the land and water under certain Jurisdictions.

I have to observe to Your Grace these proposed Corporations, should have the right of suing and being sued and sufficient powers for giving efficacy to all internal regulations and by these means of promoting the welfare of the Community, without any of those monopolies which exist in European Corporations—

The Basis adopted for an equal Representation of the People of the Province was Its population, ascertained by the Militia Rolls—This Principle, liable from its own nature, and the situation of the Country to fluctuate, will in a more particular manner become unequal, should Detroit be relinquished to the United States—It therefore appears to me, seasonable that I should request Your Grace's directions on what established Principle the Extension of the number of Representatives should hereafter take place? and It may be worthy of your consideration whether in the present peculiar Instance It may or may not be proper to give the Right of electing Members to the *Inhabitants* of the proposed cities of Niagara and Kingston; which certainly will add to their respectability—both, should include a competent tract of Ground, and for all purposes, the former should include *Queenstown*, where some Proprietors mean to build largely the ensuing Year, and the present town of *Newark*.

In respect to existing circumstances, It appears to me of consequence, That *Niagara* should be incorporated so soon as possible, were it only to preserve its name in the King's Dominions. It is the policy of the United States to call themselves solely *Americans*, not only with the view to melt down in that general name every part of their Confederation, but to enforce when time shall suit, their principle, "that all Colonies connected with European Governments, or depending upon them are foreign, and invaders, and that They themselves only are the Natives."

Having no Chief Justice, and being at a distance from the Attorney General I have thought proper at the present Crisis to offer These ideas to Your Grace In Hopes that should they be deemed worthy of attention, Charters of incorporation with such powers may be forwarded to me from England, before the meeting of the next Session; and I am to observe to Your Grace, That as by Act of Parliament [1] the ensuing Session will be the last of the present House of Assembly, It will be provident, to pass every Bill, that may be necessary before it be dissolved, as it not be probable that a more loyal or better disposed set of men will be again reassembled.

It has been represented to me, that the Act of Parliament [2] which established the Constitution of this Country, specifying that the Lands should be granted in free and common soccage, is at variance with His Majesty's Instructions which preclude my granting Lands without The reservation of *Mines* which may be discovered; and It is stated to me that a Grant in free and common Soccage reserves only to the Crown, Mines of *Silver* and *Gold*.

I shall be glad of Your Grace's immediate directions on this Point; in particular as I meant to submit to you whether the grant of *Iron Mines* might not be made by the Government of this Country, there is every probability that They may be usefully worked—And I presume that His Majesty's Ministers do not mean to follow any system which may preclude such rude Manufactures as may be necessary for the benefit of the Country.

* * * * * *

I have the honour to be with great Respect and Deference.
My Lord Duke
Your Grace's
most Obedient and
most humble Servant
J. G. Simcoe.

[1] See Constitutional act, § 27 (No. LIV).

[2] *Ibid.*, § 43.

## LX

## PORTLAND TO SIMCOE

[Trans.: Doughty and McArthur.]

Whitehall, 20th May, 1795.

Lieut. Governor Simcoe,
Sir,

* * * * * *

Both the Measures [1] seem very unfit to be encouraged by the Parent State in a dependent Colony —The Legislative Power being given up to an Assembly of their own, it is only thro' the executive Power, vested in the Person having the Government of the Province, that the Sway of this Country can be exercised—Every kind of Authority that is not inconsistent with the Constitution given to the Province, ought, therefore, to be concentered in his hands—Whereas the evident tendency of both these measures, is to fritter down his direct Power, and to portion it out among Corporations and Lieutenants, who, on many occasions, may be disposed to use it in obstructing the Measures of Government, and, in all events, will require to be courted and managed, in order to secure the right direction of the Influence thus unnecessarily given them. I have entered purposely more at large into these proposed Measures, because I observe that your adoption of them arises from an idea, that by assimilating the modes of the Government of the Province, to the modes of the Government of England, you will obtain all the beneficial effects which we receive from them—Whereas to assimilate a Colony in all respects to its Mother Country, is not possible, and if possible, would not be prudent. The one may have many Institutions, which are wholly inapplicable to the situation of the other—Some there may be, which we permit to continue here only, because they already exist, and are interwoven with other parts of the Government, but which, perhaps, if we had a choice, we should not now be disposed originally to introduce—Such, in the Opinion of many, are Corporations, and separate Jurisdictions of all sorts. Others there are which may be objectionable in a Colony, as tending to lessen the Authority which the Parent State ought to possess over it, as long as that relation subsists between them—Of this description I conceive to be all subordinate Powers created in the Colony, beyond those which are absolutely necessary for its internal Police—The Power of the Person having the Government is the Power of this Country; but such subordinate Powers as are proposed are not ours. We have no connection with, or direct Influence over, those who exercise them—They are rather means and instruments of Independence. Having said thus much, it must depend on local circumstances and further consideration, how far it may be expedient to attempt to undo anything that has been already done; but I can see no ground that will authorize me to encourage the further prosecution of either of the Measures in question.

* * * * * *

I am, &c.
PORTLAND.

## LXI

## MILNES TO PORTLAND [2]

[Trans.: Doughty and McArthur.]

Quebec, 1 November, 1800.

MY LORD

On my first taking upon myself the administration of the Affairs of this Province I was extremely struck with the wavering state in which I found the Interests of Government. I have since been at much pains to discover the real Causes of this situation of things which I plainly saw lay deeper than, I believe, is generally supposed by His Majesty's Ministers; and I am so forcibly impressed with a persuasion that this Subject ought to be attended to, that I feel it my Duty to lay before Your Grace, such Remarks as have occurred to me respecting

[1] i. e. the plans of creating corporations and of establishing lieutenants of counties (see No. LIX.)

[2] This dispatch illustrates the workings of the Constitutional act of 1791. It is also valuable, as it throws light on the position of the executive government and the house of assembly in Lower Canada before the racial struggle began to complicate the issues.

it, in order that Your Grace may be fully apprized of the real State of the Country, and take such Measures as you may think fit to strengthen the Executive Power in Lower Canada.

However excellent in itself the new Constitution may be which His Majesty has graciously been pleased to grant to the Province, I conceive the Foundation of it must rest upon a due proportion being maintained between the Aristocracy and the lower Orders of the People, without which it will become a dangerous Weapon in the hands of the latter. Several Causes at present unite in daily lessening the Power and Influence of the aristocratical Body in Lower Canada: I cannot however but think that Measures might be adopted to counterbalance in some degree this Tendency, and I shall hereafter have the Honor to point them out to your Grace: but in order to make myself clearly understood I must first explain what I consider to be the principal Causes by which the Influence of the Aristocracy in this Country has gradually been reduced to it's present State.

The first and most important of these I am of opinion arises from the manner in which the Province was originally settled; that is, from the independent Tenure by which the Cultivators (who form the great Body of the People and are distinguished by the appellation of *Habitants*) hold their Lands; and on the other hand from the inconsiderable Power retained by those called the Seigneurs, and the little disposition they feel to encrease their Influence, or improve their Fortunes by Trade. Hence by degrees the Canadian Gentry have nearly become extinct, and few of them on their own Territory have the Means of living in a more affluent and imposing Style than the simple Habitants who feel themselves in every respect as independent as the Seigneur himself with whom they have no further Connexion than merely the obligation of having their Corn ground at his Mills, paying the Toll of a Fourteenth Bushel, which they consider more as a burthensome Tax than as a Return to him for the Lands conceded by his Family to their Ancestors for ever upon no harder Conditions than the obligation above mentioned, a trifling Rent, and that of paying a Twelfth to the Seigneur upon any transfer of the Lands.

The Second Cause which I apprehend tends to lessen the Influence of Government in this Province is, the prevalence of the Roman Catholic Religion and the Independence of the Priesthood [1]: this Independence I find goes considerably further than what was intended by the Royal Instructions wherein it is particularly declared to be His Majesty's Pleasure "that no Person whatsoever is to have Holy Orders conferred upon him, or to have the Cure of Souls without a License for that purpose first had and obtained from the Governor," etc. etc. But this Instruction has hitherto never been enforced, by which means the whole Patronage of the Church has been thrown into the hands of the Roman Catholic Bishop, and all connexion between the Government and the People through that Channel is cut off, as the Priests do not consider themselves as at all amenable to any other Power than the Catholic Bishop.

A singular Instance lately occurred of this Independence: A Priest at Terrebonne near Montreal interfered in the most indecent manner in the late Election for the County of Effingham; he exerted all his Influence to prevent the Solicitor General from being chosen, and violently supported a Man who had been expelled from the last House of Assembly on account of his having been convicted of a Conspiracy, and who was consequently considered as a dishonored Person.[2] Upon this man's being chosen the Priest actually went so far as to perform High Mass in the Parish Church, to return Thanks as he termed it, "for the reelection of this Martyr." In justice to the Canadian Bishop I must add, that upon my Representation he did every thing which was proper to be done on the occasion.

Another Circumstance which has greatly tended to lessen the Influence of Government since the Conquest has arisen from the necessity which then existed of disembodying the Militia: but as I am by no means of Opinion, considering the Circumstances which took place a few years since, that it would be either practicable or prudent to call out the Militia at this particular moment, I shall not enter further into this Subject at present, though I shall hereafter revert to the Militia even in its present State as a Means by which a certain degree of Influence might still perhaps be established in the several Parishes.

[1] For a further discussion of this point see Craig's dispatch to Liverpool, May 1, 1810 (No. LXV).

[2] i. e. Charles B. Bouc, who, after being expelled from the house of assembly, successfully ran for the county of Effingham against solicitor-general Foucher in 1800. He was disqualified by act of parliament in 1802.

It may be unnecessary to observe to your Grace how much more important the above Facts are become since the establishment of the new Constitution. In the time of the French Government an Ordinance, issued in the name of the King, was sufficient to enforce the execution of any Measure that was deemed expedient without any discussion taking place upon the subject, or its entering into the Minds of the unlettered Habitants to doubt for a moment the propriety of the Measure.

But since the establishment of the present Constitution in the year 1792, the Case is very different every thing being previously discussed in the House of Assembly; and unless a certain preponderance can be maintained in that House (which at present is by no means as firmly established as I could wish) the Power of the Executive Government will insensibly become nothing.

Very few of the Seigneurs, as I have already hinted, have sufficient Interest to insure their own election or the election of any one to whom they give their Support in the House of Assembly, and the uneducated Habitant has even a better chance of being nominated (though he cannot perhaps sign his name) than the first Officer under the Crown: There was a moment when I even despaired of getting the Attorney General [1] into the present Assembly; and though it is undoubtedly better composed than the last, it is far from being so respectable a Body as Government might wish.

The Canadian Habitants are I really believe an industrious, peaceable and well disposed People; but they are, from their want of Education and extreme simplicity, liable to be misled by designing and artful Men, and were they once made fully sensible of their own Independence, the worst Consequences might ensue. They are in fact sole Proprietors of nearly all the cultivated Lands in Lower Canada.

The Seigneurs and Ecclesiastical Bodies to whom the Lands were originally granted having conceded the greater part of their Lands for ever, with little or no reserve, to the Cultivator in small Parcels of from One to Two Hundred acres retaining only as I have already observed the Property and Profits of the Mills, a certain Proportion of their Produce which is sometimes paid in kind and in various ways, and the Lods et Ventes; and this Species of Property attached to the Seignorial Rights is by the ancient French Laws of Inheritance, which occasion frequent subdivisions of Property, in a few Generations become quite inconsiderable, whereby the Situation of the Seigneur has in many instances been reduced below that of the Vassal. Each Habitant cultivates as much Land as he can manage with the Assistance of his own family, and as is necessary for its support; and having thus within themselves from year to year all the Necessaries of Life, there cannot be a more independent Race of People, nor do I believe there is in any part of the World a Country in which Equality of Situation is so nearly established. Except in the Towns of Quebec, Montreal and Three Rivers, little or no difference is observable in the affluence of the Canadians but what may in some Measure arise from the local Circumstances of more or less favorable Situation, a richer Soil, or a greater or less degree of exertion.

The Counties are divided into Parishes each Parish chiefly extending about Three Leagues along the Rivers St. Lawrence and Chambly, and to each of which there is a Parochial Church; the principal Person in every Parish is in general the Priest and the next the Captain of Militia, and it is through the latter that any Business is transacted for Government.

Having endeavoured to give your Grace some insight into the actual State of this Country, which I could more fully enlarge upon if I was not apprehensive of intruding too much upon your time till I have received your permission so to do, I shall proceed to point out the means by which I imagine the Influence of Government might be immediately extended to the distant Parts of the Province, and though I am conscious this cannot be effected without a certain expence to the Mother Country, I consider that expence as inconsiderable when compared to the Sums it would require to quell any disturbance that might for want of timely precaution take place in the Province: the apprehension of such an Event though not immediate is strongly impressed on the Minds of some of the best Friends of Government.

I am well aware the chief Object to be depended upon to encrease the Influence of the Crown, will be by means of the Waste Lands; and in that point of view the delay that has taken place in the Land Business is greatly to be regretted and it

[1] Jonathan Sewell.

becomes an Object of peculiar importance to Government that no further delay may occur to prevent the clearing and settling of the immense Tracts that are now in the hands of the Crown undisposed of, as their being granted in free and common Soccage will in time (if judiciously granted) form in this Province a Body of People of the Protestant Religion that will naturally feel themselves more immediately connected with the English Government; but as this cannot be expected to have any immediate effect, I am inclined to think that in the mean time much may be done first through the catholic Priests, and secondly by means of the Militia.

The present Catholic Bishop [1] is extremely well disposed to Government; he is allowed by His Majesty Two Hundred Pounds per annum as Superintendent of the Romish Church; in addition to which he receives from Government a Rent of £150 per annum for the use of the Bishop's Palace at Quebec which is occupied by Public Offices; He has lately applied to me for an encrease of this Rent, signifying at the same time that his Income is very inadequate to his Situation and the Calls which are made upon it, which I have reason to believe is a just Statement. This Application offers an occasion of attaching the Canadian Bishop more particularly to Government, if by such an encrease of his appointments as His Majesty shall graciously be pleased to allow his Situation was made easy, at the same time requiring of him a strict attention to that part of His Majesty's Instructions to the Governor which I have before mentioned.[2]

This I am of opinion would tend very much to increase that Consideration which the Priests themselves ought to feel, and to encourage in their Parishioners for the Executive Government, at the same time that it would ensure the co-operation of the Canadian Bishop: But in order to carry this point particular care must be taken to chuse a proper moment, and if the Bishop should be found decidedly averse to make the Sacrifice required of him, it ought perhaps to be deferred till the Peace.

The Priests have a 26th of all the Grain, which may be valued at Twenty-Five, or Twenty Six Thousand Pounds a year, which alone must make their Influence very considerable, and especially as the Religious Bodies are in possession of nearly One Fourth of all the Seignorial Rights granted before the Conquest (excepting those of the Jesuits Estates latterly taken into the possession of the Crown) as will appear by the Inclosure.

With regard to the Militia it will be more difficult to give Your Grace a clear and distinct Idea of the Mode in which I am inclined to think use may be made of this Body to support the Interests of Government throughout the Province, and to disseminate Principles of loyalty amongst the Canadians in opposition to that spirit of democracy which has lately gained so much ground in many Parts of the World, but fortunately has not at present made any material progress in Canada.

The Population of Lower Canada is computed as about One Hundred and Sixty Thousand Souls, Nine Tenths of whom reside in the Parishes before described, distinct from the Towns, and from these are drawn the Canadian Militia which amount to 37,904 between the ages of 16 and 60. In the Parishes here alluded to, there are 292 Captains of Militia who are chosen from among the most respectable of the Canadian Habitants (the Etat Majors amounting to 16 being in general chosen from among the Seigneurs) and here it is necessary to inform your Grace how far under the dominion of France the Body of the People were regulated in all public Matters by the Officers of Militia; the Captains of Militia being the Persons employed to issue and enforce the public ordinances and the Corvées, and who through the Authority thus delegated to them by Government possessed considerable Influence in their respective Parishes.

Although under His Majesty's Government these Powers have in a great Measure been withdrawn, especially since the establishment of the new Constitution, there still remains in the minds of the Canadians a certain Consequence attached to the Character of Captain of Militia; and as I have before observed to your Grace, it is still customary on all public occasions to employ this useful Class of People to perform many Services for Government which they have hitherto done without other reward than merely that arising in their own Minds from the Honor and respectability of the Appointment; but this though sufficient to

[1] Bishop Denaut. The Bishop's palace was used by the legislative council for its meetings till 1838.

[2] For a similar scheme in 1810, see No. LXV. Milnes's suggestion doubtless owed its origin to H. W. Ryland (see pp. 239–40. Cf. p. 235, note 2).

render it desirable is, as they feel, by no means an equal return for the considerable Portion of their time so employed: If then by means of an honorary and pecuniary reward, or by any Plan that may be approved of by the Executive Council, this Class of the Canadians could be brought to consider themselves as the immediate Officers of the Crown, and peculiarly attached to the Interest of Government, there is no doubt that such an Influence from the Circumstance of being equally diffused over the whole Province would effectually tend to keep alive among the great Body of the People that Spirit of Zeal and Loyalty for monarchical Government which I believe to be natural to the Canadians, but which for the want of an intermediate Class to whom they can look up, and from their having no immediate Connexion with the Executive Power is in danger of becoming extinct.

That Loyalty is a lively principle in the Breasts of the Canadians I have no doubt, if I may judge from the expressions of satisfaction which are shown by all Ranks whenever the Representative of His Majesty only passes through the Country: this I myself experienced (though at that time personally unknown) in the Tour I lately made through the Province.

There are several other Means besides those I have already stated by which I am convinced, a proper Bias may be maintained in the Minds of the Canadians, so as I should hope would secure the Province against any internal Commotion or Disaffection, the Details of which I shall reserve until I shall receive your Grace's Sanction to trouble you further on this head, particularly as in order to give your Grace a complete Idea of this Subject and the extent of my Plan it will be necessary to solicit your attention while I lay before you a Sketch of the relative Expences of the Civil Department of Lower Canada, and the Military Expenditure of the Canadas, by which it will appear how little Proportion exists in the Expences of those Departments, and what a considerable saving may hereafter accrue to Government if according to the Plan proposed, and by a more liberal allotment to the Civil Expenditure such an Influence could be attained over the Minds of the Canadians as might in the course of time not only secure the Province from any interior Commotion or disaffection, but likewise insure the cooperation of the Inhabitants in the Defence of the Province against the Attempts of a foreign Enemy without the aid of such a considerable military Establishment as the Mother Country has hitherto maintained in this part of His Majesty's Dominions.

The Deficiency of the Revenue, upon an average of the last Five years of the Civil Expenditure, amounts as will appear in the Paper I have the honor to transmit, to £12,000 per annum, and the yearly Military expenses of the two Canadas, according to the best Information I can collect, to about £260,000. This Expence would in the case of any Tumult or Insurrection in the Country, or of a War with the neighbouring States, most probably be doubled its present amount; and this Consideration alone shews how intinitely important it is to the Mother Country that your Grace should be made acquainted, while there is yet time, with every means by which the Influence of the Crown may be encreased, and the hands of the Executive Power strengthened. But there is another Consideration of perhaps greater importance than any above mentioned; could such an Influence be obtained throughout the Province by means of the Priests and the Captains of Militia as I have ventured to look forward to, that Influence when fully established might also be employed so as at all times to ensure a Majority in favor of Government in the House of Assembly, and to secure the election in that House of such Men as from their Education and Knowledge of Business are most likely to see the real Interests of the Province in their true light, and not to be deluded by the fallacious Arguments of any popular Speaker from giving their entire Support to the Executive Government. The defect of such an Influence over the Elections lessens the respectability of that Assembly in a very great degree, and particularly as from the absolute Want which has so long existed of the Means of Education and the inability of the Canadians to support the Expence that would attend sending their Sons to the Mother Country for that purpose, there are at present scarcely any rising Men, and but few Men of talents among the Canadian Gentry.

From this and other Causes the Business of the House of Assembly is transacted with so little System or regularity that the oldest Members are sometimes unable to form a judgment of what is likely to be the result of their deliberations on the most common Subjects.

While a due preponderance on the side of Government is so manifestly wanting in the Assembly it is considered by the Well wishers of Government as a fortunate Circumstance that the Revenue is not at present equal to the Expenditure, & your Grace will immediately see the necessity on this account of preserving, in appearance at least, that disposition in a greater or less degree, as there is reason to apprehend that in case the Province could be induced to Tax itself in a degree equal to the Calls of the Executive Government, the Right of regulation and control over the whole would probably be aspired to by the Assembly, which could not fail of producing the most injurious Consequences to the Colonial Government, rendering it from that moment dependent on the Will of a popular Assembly.

The Burthen which is at present thrown upon the Mother Country will be fully compensated for whenever the Sums that shall arise from the Sale of the Waste Lands begin to come in, and particularly if (as appears by the Dispatch of the 13th of July 1797 to Gen. Prescott to have been in contemplation) it should be determined to appropriate the Monies arising from those Sales to the purchase of Stock in the English Funds, and the Interest of this Stock to go in aid of the Civil Expenditures of the Province in such manner as the Lords Commissioners of His Majesty's Treasury may direct.

The Quantity of Land which from first to last will have have been at the disposal of Government is computed at about 150 Townships equal to Ten Million of Acres which have actually been applied for, including as is supposed the principal part of the ungranted Lands in Lower Canada that are deemed convenient for settlement and fit for cultivation.

Of the above about 35 Townships only are in contemplation to be granted on the original Terms proposed in the year 1792 consequently 115 Townships will remain for the future disposition of the Crown exclusive of the Church and Crown Reserves consisting of Two Sevenths set a part in the Townships already granted.

The Wealth, Power and Influence that must accrue to the Mother Country when those Lands become settled is an object of self evident magnitude, and must in time make a full return for whatever will be found necessary in the mean while to support and secure so valuable a Colony.

I flatter myself there can be no doubt that the liberality with which His Majesty has lately been pleased to provide the Means of Education in the Province will go a great way to secure the affection and loyalty of the rising Generation who would otherwise be in danger of imbibing Principles inimical to His Majesty's mild and paternal Government by the necessity which has hitherto existed of their being sent to the neighbouring States for education. The respectable footing upon which the Protestant Church is about to be put in Quebec will likewise tend to encrease that Consideration which ought to prevail for the Established Church.

When I began this Despatch I did not foresee the length into which I have been inevitably drawn, but I trust I shall stand excused in the opinion of your Grace by the motives that have actuated me in this research, and I may truly say I have no other view than a full and conscientious discharge of all the Duties that belong to the Situation which His Majesty has been pleased to entrust to me.

I have the Honor to be
My Lord,
Your Grace's
Most obedient and
Most humble Servant
ROBT. S. MILNES.

## LXII

## PORTLAND TO MILNES

[Trans.: Doughty and McArthur.]

Whitehall, 6 January, 1801.

Sir,—

The matters stated in Your Letter to me separate and secret of the 1st November [1] are so highly important to the King's Canadian Government that I shall make them the subject of the separate Dispatch.

The prevalence of the popular influence in Lower Canada seems to be attributed by you to three principal causes, viz.—first, the separate and unconnected

[1] No. LXI.

Interests of the Seigneurs and the Habitans, by which the latter are become totally independent of the former, and are not likely to be influenced by them in any respect —secondly—the Independence of the whole body of the Roman Catholick Clergy, who are accountable to no other authority than that of their own Bishop; and thirdly—the necessity there has been of disembodying the Canadian Militia, in consequence of that Country's having been conquered by His Majesty's Arms, and the inexpediency of their being called out under the present circumstances.

As the separate and unconnected situation of the Seigneurs and Habitans arises from the Established Laws and Usages of the Province in regard to the property held in these two descriptions of Persons, it is an evil certainly to be regretted, but I fear it will be very difficult, if not impossible, to remedy; and as the Canadian Gentlemen can derive no influence from their Landed possessions, it must necessarily be left to the particular exertions, ability and ambition of the Individual Seigneurs to emerge from their present State of insignificance—all that can be done in this respect, is to hold out motives for execution, and to give all possible encouragement in those instances where any disposition of the kind is found to exist—but before I proceed further I can not help expressing to you my surprise that the establishment of the Canadian Battalion in Lower Canada, the principal object of which was to draw the Canadian Gentlemen from their Indolent and inactive habits and to attach them to the King's service, should have met with no greater success—had any eagerness been manifested in completing this Battalion, it might have been judged advisable to form a second and third of the same sort in case the spirit and inclination of the King's Canadian Subjects appeared to call for it.

With respect to the Roman Catholick Clergy being totally independent of the Governor, I must first observe that I am not aware of the causes that have led to a disregard of that part of the King's Instructions, which require—"That no person whatever is to have Holy Orders conferred upon him or to have the care of Souls, without Licence first had and obtained from the Governor." The resumption and exercise of that power by the Governor and the producing such a Licence requisite for admission to Holy Orders, I hold not only to be of the first importance, but so indispensably necessary, that I must call upon you to endeavour to effect it by every possible means which prudence can suggest—you will therefore readily conclude that I must see with pleasure your proposal for encreasing the Allowance to the Catholic Bishop adopted almost to any extent, if it can prove the means of restoring to the King's Representative in Canada that power and controul which are essentially necessary to his authority, and which is expressly laid down by the 44th Article of your Instructions above alluded to.

The third and last cause of the preponderance of the popular influence, viz., the situation of the Canadian Government with regard to its Militia appears to me to carry with it, its own Remedy; inasmuch as the Establishment itself is capable of being converted into an Instrument of considerable Weight and authority in the hands of the Executive Power, provided the measure I have to suggest should meet the opinions and sentiments of the Canadians themselves—according to your statement what seems to be wanting is to put the Militia upon such a footing that its being called out shall be so much for the Interest and advantage of those that compose it as to render it favorable to the measure. With this view I have examined your Militia Acts of May 1794 and May 1796, and the particular in which they strike me as being defective is that they contain no Provision for the Annual Meeting of the Militia or even any part of it, except for two days in the year for the purpose of being mustered; what I would propose therefore is (in case of its meeting with the approbation of the Legislature) that a certain proportion of the Militia to be chosen by Ballot should be called out to be exercised for 3 weeks or a month in each year during which time the Officers and men who shall be called out should be allowed the same pay and subsistence as His Majesty's Regular Troops. It would of course be provided that the men who should be chosen by Ballot in any one year, should not be ballotted for again until the residue of the militia should have been called out; by which means all the Officers and men would take their regular tour of duty & partake of the advantages arising from their being called out.

The adoption of this part of our Militia Law (with such variations as local circumstances may call for) will necessarily require that another part of it should

be adopted, viz., the permanent pay of an Adjutant to each Regiment and of a certain number of non-commissioned officers, fifes Drums as in the militia of this Kingdom.

In amending the Canadian Militia Bill in the manner I have suggested, Provision might also be made for such other Appointments as would be necessary during the time of the annual exercise of that portion of the Militia which may be called out. What the number and description of those appointments should be, must depend upon the number of militia men to be called out and must therefore be regulated on the spot.

You will understand that I am only stating the outline of such amendments to your Militia Laws, as I conceive to be most likely to secure the objects you have in view, and to create and establish that interest and connection which should subsist between the Militia and the Executive Authority of the Province.

Should you be of opinion that these amendments will meet with the concurrence of the Legislature, the sooner they are digested and put into proper form with the Assistance of the Executive Council and the Law Officers of the Crown, the better; and you will as immediately as possible transmit to me an Estimate of the additional expence which will be created by them, in forming which Estimate I am confident you will take care to keep it as Low as the object to be attained by the adoption of the proposed amendments will allow of.

These leading points relative to the Roman Catholick Clergy and the Militia being carried, every future step which is made in the settlement of the Province must, by making Grants of the Waste Lands of the Crown to Protestants upon the conditions, and subject to the Regulations now finally established and acted upon in the Land Granting Department necessarily tend to lessen the degree of popular influence which is at present possessed by that description of His Majesty's Canadian subjects which constitutes so great a proportion of the inhabitants of the Province at large.

I need not add that I shall be anxious to receive your answer to this letter, as well as the further details which you promise to communicate to me.

I am, etc.

PORTLAND.

## LXIII

## CRAIG TO CASTLEREAGH [1]

[Trans.: *Canadian Archives, MSS.*, Q. 107, pp. 306 ff.]

Quebec, 5th August, 1808.

My Lord,

* * * * * *

The Canadian Party, hang so compleately together, and these People have so much Influence among them, that it is to be expected; while their ignorance or their Presumption, for I know not to which to attribute it, is such, that I shall not be surprized if they adopt some resolution which may put me under the necessity of dissolving them; they either believe, or affect to believe that there exists a Ministry here, and that in imitation of the Constitution of Britain that Ministry is responsible to them for the conduct of Government. It is not necessary that I should point out to your Lordship the steps to which such an Idea may lead them.[2]

I have the Honor to be My Lord

Your Lordship's Most obedient humble servant,

J. H. CRAIG.

[1] Robert Stewart, viscount Castlereagh, was appointed secretary of state for war and the colonial department in July, 1805.

[2] For a contemporary account of Craig's rule in Canada, see Christie, R., *Memoirs of the Administration . . . of Lower Canada by Sir James Henry Craig* (Quebec, 1818). The growing strength of racial strife characterized Craig's régime. Craig shrewdly saw the logical issue to Canadian claims. This dispatch is the earliest mention of 'a ministry' in Canada in the constitutional sense of the term.

## LXIV

## CASTLEREAGH TO CRAIG

[Trans.: Doughty and McArthur.]

Downing Street, 7th Sept., 1809.

Sir,

Having written to you officially [1] upon the Subject of your letter relating to the Dissolution of the Legislative Assembly, I think it at the same time right to express to you my private sentiments.

Nothing appears to me more difficult or delicate to manage than a Provincial Assembly constituted like that of Lower Canada, wherein almost all the Privileges of the House of Commons of Great Britain are claimed or exercised, where there exist little Means of influencing the Members and inducing them to coalesce with the Government, and wherein from the example of the American States, and the very nature of a popular Assembly, strong, active & turbulent Minds have great incitements and opportunities to raise themselves into imaginary or real Importance by opposing the Administration. And the Difficulty becomes thus great from another peculiar circumstance that there is no means whatever of punishing an Assembly but by Dissolution, & that this Method when the conduct of the Assembly is popular, is sure to fail of success, and to increase the Evil it is intended to cure.

It is therefore of the utmost consequence to take care that in any difference which may arise between a Governor & a Provincial Assembly he should not advert to any particular proceeding of the Assembly, that is not clearly unconstitutional and illegal: And that, when the improper opposition arises from Discussions of a mixed nature, where they can plausibly plead their Privileges and Rights in favor of their Conduct, however improper; no future allusion to such Conduct should be made by the Governor on which the Assembly might fasten a Complaint.

The two Grounds of Complaint against the Assembly which you specify are their Proceedings for preventing Judges sitting in the Assembly, & for endeavoring to expel a Member on the allegation of his being a Jew, altho' he had taken the regular Qualification Oath on the Gospels.

The first of these objects can never, as you admit, be considered in itself as an improper or illegitimate one to pursue, however the Motive giving rise to Discussion may be factious; nor am I by any means persuaded that the Regulation would be an unfit one in itself: And further when the Bill which they had passed, had been thrown out by the Legislative Council, the Assembly had a right, if they thought fit to appoint a Committee to examine the inconveniences which arose from Judges canvassing at Elections.

So again with regard to the Endeavours to expel Mr. Hart for being a Jew, it was obvious that a real Jew could not sit in the Assembly, as he could not take an oath upon the Gospels—it was therefore competent to the Assembly to inquire whether Mr. Hart had complied with all such Requisitions as might be legally necessary to prove his bonâ fide conversion to Christianity, and that he took the Oath without mental Reservation.

I state these Points, not from any doubt of the Assembly acting in the spirit you represent, but to shew, that supposing the next Assembly may meet with a similar Disposition & Temper to that for which you dissolved the last: It is probable they will renew the discussion of measures against which your Censure was pronounced & will make such assertions of their Rights of free Discussion and Debate as may lead to more Embarrassments than have yet arisen.

When you advert to the expressions in which you have conveyed your Sentiments of the Proceedings of the Assembly you may naturally suppose they have created some Sensation here, & that an anxiety has been expressed as to the particulars of the Conduct which could require such severe animadversion. I shall hope however that there will not be any public Discussion on the subject, as the Topics are of such a nature as might give the efforts of a Party hostile to you or to Government some advantage.

What I would therefore recommend is, in Case, on the Meeting of the New

[1] The official dispatch approved Craig's action, but advised dignity and moderation (Doughty and McArthur, pp. 363 ff.).

Assembly animadversions should be made on your Speech on the close of the last, that as you will not be wanting in that firmness Your Situation & character demand, so you will avoid any Expression, which can be construed as touching in any degree, upon their supposed Privileges & the general Freedom of Inquiry & Debate.

In regard to the Measure of excluding Judges from a Seat in the Legislature there is no Repugnance felt here to the Measure, should you at any time see it right to acquiesce in it—The Principle of exclusion here extends to what are called the 12 Judges & to them only; for the Welsh Judges, the Judge of the Admiralty & Prerogative & the Master of the Rolls all sit in Parliament.

I have the honor, etc.,

CASTLEREAGH.

## LXV

## CRAIG TO LIVERPOOL [1]

[Trans.: Doughty and McArthur.]

Quebec, 1st May, 1810.

My Lord,

If my short dispatch No. 2 which I transmitted by way of New York has reached Your Lordship, you will be in some degree prepared to receive the Report on the State of this Province, which I conceive it to be my particular duty, under the events that have lately taken place and the impression to which these have given rise in my mind, and in that of very many of the best informed persons here, to lay before His Majesty's Government.

* * * * * *

In the consideration which may be given to the various objects, which I may feel myself called on to submit to your Lordship, I must request that the particular situation in which this Province stands, as being a conquered Country, may never be put out of view, and I claim that it may always be recollected that I speak of a Colony, the population of which, is usually estimated at 300,000 souls, and which, calculating upon the best data in our possession, I myself believe to exceed 250,000. Of these 250,000 souls about 20,000 or 25,000 may be English or Americans, the remainder are French. I use the term designedly My Lord, because I mean to say, that they are in Language, in religion, in manner and in attachment completely French—bound to us by no one tie, but that of a Common Government, and on the contrary viewing us with sentiments of mistrust & jealousy, with envy, and I believe I should not go too far, were I to say with hatred.

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So compleat do I consider this alienation to be, that on the most careful review of all that I know in the Province, there are very few whom I could venture to point out as [not] being tainted with it; the line of distinction between us is completely drawn. Friendship [and] Cordiality are not to be found—even common intercourse scarcely exists—the lower class of people to strengthen a term of contempt add Anglois—and the better sort with whom there formerly did exist some interchange of the common civilities of Society have of late entirely withdrawn themselves—the alledged reason is that their circumstances have gradually declined in proportion as ours have increased in affluence; this may have had some effect, but the observation has been made also, that this abstraction has taken place exactly in proportion as the power of the French in England has become more firmly established.

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Among the objects which I deem it necessary to bring to your Lordship's view, it is impossible for me to overlook the Clergy,[2] and the Religious establishments of the Country, the Act [3] of the 14th of His present Majesty by which the free exercise of the Roman Catholic religion is granted to the Canadians, expressly adds the condition that it shall be subject to the King's Supremacy as established by the Act of the first of Elizabeth—but neither has this, or one Article of His

[1] Robert Jenkinson, earl of Liverpool, succeeded Castlereagh as secretary for war and the colonies in December, 1809.

[2] Cf. Milnes's dispatch, November 1, 1800. (No. LXI.)

[3] See Quebec act, 1774, § v. (No. XXXI.)

Majesty's Instructions to the Governors ever been attended to, the Appointment of the Bishop seems to have been conducted loosely, and with very little ceremony, the Council Books offer no other Document on the occasion, than that the person has taken the Oath pointed out by the Act of the 14th Geo. III in lieu of the Oath required by the Statute of the first year of the Reign of Queen Elizabeth, but without mentioning on what account he takes it; of late he has been designated on that occasion as Roman Catholic Bishop of Quebec, formerly he was only called Superintendant of the Romish Church.

Altho' it does not appear upon the Records of the Council Board or by any other Document, His Majesty does however nominate the Coadjutor, but this nomination appears to have been verbal. I observe in the Return of the offices of emolument of this Colony lately made to your Lordship's Office, the Bishop says it is *cum futura successione*, how that can be, when it does not appear to be under any written document of any sort, I do not know, unless it be in the Pope's subsequent confirmation, which always takes place, it is however of such weight, that the succession of the coadjutor to the Bishopric seems to be considered as a matter of course, at least there is no appearance of there ever having been any interference on the part of His Majesty's Government.

This Bishop tho' unknown to our Constitution and confirmed, if not appointed by a Foreign Power, has been suffered to exercise every Jurisdiction incident to the episcopal functions, he nominates to all the benefices of the Province, and removes at his pleasure from one living, to another, and it is not an unfrequent circumstance, for an offence, or a supposed offence, to be punished by a degradation from a good Cure to one of lesser emolument. His Patronage is at least equal to that of the Government, & it is so perfectly at his pleasure, that Government has no other notice of it, than that he usually once a year delivers to the Governor a list of such changes as have taken place during the preceding twelve months; so complete does the Bishop consider his independance, & so cautious is he not to perform any act which might be construed into an acknowledgement of His Majesty's Rights that if a Proclamation is issued for a Fast, or thanksgiving or any other object which involves it in an Act of the Church, He will not obey it as an emanation from the King, but He issues a mandate of his own to the same purpose, indeed, but without the least allusion to His Majesty's authority, or the Proclamation which the Government has issued, In truth the Catholic Bishop tho' unacknowledged as such, exercises now a much greater degree of authority than he did in the time of the French Government, because he has arrogated to himself every power which was then possessed by the Crown; The arms of England are nowhere put up in the Churches.

With the Curés themselves, no direct communication from the Government exists in any shape, a numerous and powerful body, dispersed in every corner of the Country, and certainly possessing a very considerable weight, and influence with the people, scarcely know, and are hardly known to the Government, no one Act of Government since it has been under my direction, has ever been addressed to a Curé, nor has any one instance of communication from a Curé ever reached me, perhaps an exception to the first part of this observation might be brought in my having in the desire of circulating the Speech I made to the Parliament when I dissolved it, directed a Copy to be sent to each of the Curés, the circumstance however will furnish no exception to the second part, for there did not occur a single instance of a Curé even acknowledging the receipt of it.

* * * * * *

Their attachment to France is equally undoubted, and it is now even supposed to be not a little directed to the Person of Bonaparte, who since the concordat, is considered among them as the Restorer of the Roman Catholic Religion.

Of the Legislative Council it is not necessary to say much, it is certainly composed of every thing that is respectable in the Province, and I believe the Members to be on all occasions animated by the best intentions towards His Majesty's Service, & the public good; It is an Object of great jealousy to the Lower House, who seem anxious to seize every opportunity of showing the little respect in which they hold it, It is thought that an increase of numbers would add to their weight, at present they seldom exceed five or six in the House.

To a People circumstanced as I have described these to be, ignorant and credulous in the extreme, having no one common tie of affection, or union, viewing us with Jealousy, mistrust, and hatred, having separate & distinct Interests, It has been thought proper to give a share in the Government of the

Country, by a House of Representatives, in which they must ever have the Majority; It is very far from my intention to question the liberal views on which the measure was originally founded, but it is my business to point out the consequences that have ensued from it.

Your Lordship is aware that tho' the Constitutional Act has established a qualification for the Electors, there is none required in the Representation, I mean with respect to Property. The Numbers of English in the House has never exceeded 14 or 15, in the two last Parliaments there have been 12, in the present there are ten, some of these have of late come from a pretty low step in the scale of society, but in general they are composed of two, or three Avocats, about the same number of Gentlemen possessing Landed property, and the remainder of Merchants of Character & estimation; Upon the first establishment of the House, the few Canadian Gentlemen that existed in the Country stepped forward, and some were elected, but they soon found that nothing was to be gained by it, on the contrary, that their absence from home and their attendance at Quebec, during three months of the year, was given at an expence that very few of them could afford, and they gradually withdrew: now that some of them have attempted to resume the stations they abandoned, they have found it impossible; but at all times, their numbers were inconsiderable: the House has ever been as it is now, in great proportion as to the Canadian part, filled up with Avocats, and Notaries, shop-keepers, and with the Common Habitants, as they are called, that is, the most ignorant of Labouring farmers, some of these, can neither read nor write. In the last parliament there were two who actually signed the Roll by marks, and their were five more, whose signatures were scarcely legible, and were such as to shew that to be the extent of their ability in writing.

I know not whether the excessive ignorance of these people, be not more prejudicial than even any malevolence could be with which they could be supposed to be actuated, In the latter case one might at least expect, that there would sometimes be division among them, but at present they are compleatly in the hands of the party which leads the House, Debate is out of question, they do not understand it, they openly avow that the matter has been explained to them the night before, by such & such persons, and they invariably vote accordingly; It is in this manner at their nightly meetings which are held for the purpose, that every question is previously decided, and it is impossible that these people can ever be set right, for those who judge right, never meet them out of the House, they do not associate with them; There was lately in the House a Habitant, who uniformly voted on every occasion against the prevailing party, but with this single exception, I do not believe that during the three Sessions that have been held, since I came here, there has been an instance of one of the Members of that Class voting otherwise than with the general Mass, that is, as directed: I mention this in order to point out, the Compleat subjection in which these people are held, for if they made use of their own Judgment, it is impossible, but that during so long a period, some question must have arisen, on which there must have been a difference of opinion.

In such a House of Assembly as I have described, Your Lordship will easily perceive that it is impossible that Government can possess any influence, they are certainly the most independant Assembly that exists, in any known Government in the world, for a Governor cannot obtain among them even that sort of influence that might arise from personal intercourse, I can have none with Blacksmiths, Millers, & Shopkeepers, even the Avocats & Notaries, who compose so considerable a portion of the House, are generally speaking, such as I can nowhere meet, except during the actual sitting of Parliament, when I have a day of the week expressly appropriated to the receiving a large portion of them at dinner.

Of the Party who had the House, I have already had occasion to speak in a former dispatch, and have been induced to enter into the Characters of a few of them; They consist mostly of a set of unprincipled Avocats, and Notaries, totally uninformed as to the Principles of the British Constitution or parliamentary proceedings, which they profess to take for their Model, with no property of any sort, having everything to gain, and nothing to lose by any change they can bring about, only any state of Confusion into which they may throw the Province:—That these people have gradually advanced in audacity, in proportion as they have considered the power of France as more firmly established by the Successes of Bonaparte in Europe is obvious to every one, and that they

are using every endeavour to pave the way for a change of Dominion, and a Return under that Government, is the general opinion of all ranks with whom it is possible to converse on the Subject; Even the very few of the better sort of Canadians themselves who have sufficient information to be aware of the misery that would ensue on such an event, while the present Government exists in that Country, and who notwithstanding their natural affection towards what they still consider as their Mother Country, would shrink from a Return under its rule at the moment, nevertheless confess the obvious tendency of the proceedings that are going on here; Unfortunately the great Mass of the people are completely infected, they look forward to the event, they whisper it among themselves, and I am assured that they have even a song among them, which points out Napoleon as the person who is to expel the English: with them the expectation is checked by no sort of apprehension, They are completely ignorant of the nature of the French System, they have not an idea that a change of Rulers would produce any alteration in their situation, and tho' if you argue with them they are ready to admit that they are happy, and in a State of prosperity as they are, they do not conceive that they would not have been equally so had they remained Subjects of France.

It is scarcely possible to conceive the influence that the Ruling Party in the House has acquired among the people, or the lengths to which those have been carried by that influence, without the possibility of pointing out one act, by which they have been either injured, or oppressed, they have been taught however to look to His Majesty's Government with the utmost Jealousy, and distrust, they avow it, and they publickly declare, that no officer of the Crown is to be trusted, or to be Elected into the House, These, together with all English in general, and their own Seigneurs, are entirely proscribed; It is only in the Cities, and Boroughs, that they have any chance, there are only two instances, where long possession of very extensive property has enabled the holders to retain their seats, tho' it has been in both Cases with the utmost difficulty. It is now to La Chambre, which is the usual expression, for they never even mention the Council, that the people look up[on] as the Governors of the Country, and yet such is the extraordinary effect of old impressions, that "de par le Roi," at this moment would I believe be followed by immediate compliance, without once reflecting whether the order were warranted by Act of Parliament or contrary to it.

The great vehicle of communication between the leaders & the people has been a paper called the Canadian,[1] which has been published & industriously circulated in the Country for these three or four years past; the avowed object of this paper has been to vilify and degrade the officers of Government under the title of *Gens en place*, and to bring into contempt His Majesty's Government itself, under the affectation of the supposed existence of a Ministere; The conduct of which was as much open to their animadversions as is that of His Majesty's Ministers at Home.

Every topick that is calculated to mislead & inflame the people has at times occupied the pages of this paper, nothing has been omitted. The various circumstances that brought on the abdication of James the 2d have been pointed out with allusions as applicable to the Government here, inferring a similarity in the occurrences of the present day; and as if to inspire them with that confidence that might be necessary in asserting their rights when the occasion should call for it, several Members were employed in narrating the actions of the wars of 47 & 56 in which Canadian prowess was held up in a very conspicuous point of view and their advantages & victories dwelt upon in an emphatic manner, It need scarcely be added that the History was derived from a very partial & exaggerated source.

In considering the probability of these people having in view their return to their own Government, it may be urged that they have been hitherto quiet & faithful subjects, during the long lapse of 50 years, in which it would rather be to be supposed that their old attachment should have gradually decreased, so that there should be the less likelihood of their assuming now a disposition, of which they have hitherto shown no indication; to all this however it may be

[1] *Le Canadien* was founded as a weekly newspaper in November,1806, its purpose being to defend the French element in the province against the attacks of the English-speaking commercial community which appeared in the *Mercury*. Craig seized the press and arrested the proprietors of *Le Canadien* in March, 1810.

replied, that no circumstance whatever has occurred to awaken their attachment to their Mother Country, nor have any pains ever been taken to produce such a change, their habits, language and religion, have remained as distinct from ours as they were before the Conquest. Indeed it seems to be a favourite object with them to be considered as [a] separate Nation; La *Nation Canadienne* is their constant expression, and with regard to their having been hitherto quiet & faithful subjects, it need only be observed that no opportunity has presented them an encouragement to shew themselves otherwise. From 1764 to 75 the Country was in a state of poverty and Misery, that would not for a moment admit of a thought of revolt in which they could expect no assistance, but even during that period there was a constant intercourse with France; Young Men who sought to advance themselves went to France, not to England, and some are now in the Province who during that period served in the French Army: during the American Rebellion it was a contest whether they should remain attached to the Crown of England, or become a part of the American Republic, and to say the best for them, their conduct did not manifest a very strong affection for the former, tho' the force the Americans had in the Province was never such as to encourage them in an open display of any prediliction for the latter, which however, I do not believe they entertained: their object was to remain quiet; The French never turned their views this way; In 1794 a strong Jacobin party [1] shewed itself, and was with difficulty kept under, but during all this period to which I have hitherto alluded they had no foreign assistance to look to, nor any head to direct them, to France they now direct their view for the former, and I am pointing out those who I fear are preparing to offer themselves for the latter, and certainly under the most formidable shape under which a head could be found.

But independant of every view which may exist as to a change in their political relation with, as a dependant on, the British Empire, the composition of the House of Assembly as it now stands is to be considered as it affects the public good, and the general prosperity of the Province, and these my Lord, I fear can never be promoted to any extent by it; Religious prejudices, Jealousy, and extreme ignorance all forbid the expectation, and these I am afraid must prevail among the Canadian part of it for a long period to come.

Questions directly of a nature to affect either the protestant, or the Roman Catholic Religion, have indeed never been brought before the House; but there are many that appear to be perfectly unconnected with the Subject, but which are nevertheless view'd by them either as affecting some temporal right of their Clergy or as having some remote tendency to promote the Establishment of the protestant interest, and to such it is vain to expect that they should for a moment listen; this has been exemplified in some remarkable instances, and that even in the Legislative Council, where in the case of a Bill brought into that House, which did not seem to have the slightest relation to Religion, Canadian Gentlemen otherwise I am sure most perfectly disposed to promote the Public welfare, & who admitted the beneficial tendency of the proposed Act, nevertheless acknowledged they were withheld from giving their concurrence by what they conceived a paramount duty, and it is to be remarked that this question could by no construction whatever be supposed to affect any right of the Catholic Bishop, or of the Clergy.

How the Act for the Establishment of Public schools was permitted to pass has always been matter of surprise—indeed the present Bishop once observed in a very serious, and official conversation, "You say that our Church never sleeps, you will allow however that we were asleep and very profoundly too, when we suffered that Act to pass." It is observable that the carrying the Act into effect, has very generally met with the opposition of the Curé of the Parish in which it has been proposed to establish a school.

The great object of their jealousy at this moment is, the progress of the Townships—that is, in fact the introduction of Settlers of any denomination but Canadians, as having a tendency, which of all others, they are most anxious to assert, to impede the complete Establishment of a Canadian Nation; These Townships are generally settled by Americans, a proportion of whom are Loyalists who were under the necessity of quitting their Country on the peace of 1784, but by far the greater Number are of Americans who have come in and settled upon those lands since that event, How far it may be good policy to admit of

[1] This reference is to the political mission of Genet, the agent of the French Republic in the United States. He made efforts to withdraw the French Canadians from their allegiance to Great Britain.

settlers of this description is another question, the Canadians however are loud in their Clamours against it; The circumstance of their being Americans, and the principles generally attributed to these, afford them the pretext, while the truth is, it would be equally repugnant to the idea they entertain of their own Interests, and they would just have the same feelings upon it, were the tract in question in a progress of settlement from Britain and Ireland; tho' in the latter case, it is probable they would not venture openly to complain, as it is, the subject has been mentioned in the House of Assembly once, under the Idea of introducing an Act relative to it, and at another time, under that of addressing the King upon it. This jealousy has increased much since they are become more systematic in their operations, and will now totally prevent any measure that may be proposed for the benefit of that part of the Country; two years ago they passed An Act for the Establishment of a Turnpike road through a part of it, at present, no hopes are entertained of getting them to consent to another, tho' it would be highly beneficial to the City of Quebec, & endeavours are using to carry it into effect by other means.

The common people as may be supposed understand nothing of the nature of the constitution that has been given them, or of that, of the House of Assembly for which they elect Members, except inasmuch as they begin to look up to them as the Governors of the Country; It is a fact, that in one part of the Province whole Parishes have hitherto constantly declined giving any votes at all, they say, they do not understand it, but they suppose it is to tax them in the End; the cry of many of them now is, they wish La Chambre (the usual expression) at the Devil, they were very well before, and they have never had a moment's peace since that took place.

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It may not be useless in order to bring the whole under one view, that I should now present a summary of the various objects which it has been my intention to submit to the consideration of His Majesty's Ministers, and to the support of which, the argument and detail to which I have alluded are meant to lead.

They are—1st. That this is already a powerful Province in so far as depends upon numbers of Inhabitants, and that in the short period of 20 or 25 years these will probably exceed half a million.

2d. That the great Mass of this population, indeed that proportion that admits of no balance from the other part, so far from being united to us by any bond of affection, views us with mistrust, jealousy and hatred.

3d. That they are, and consider themselves as French, attached to that nation from identity of Religion, laws, language, and manners, This is general, and runs thro' all Ranks and descriptions, the exceptions as I believe being very few.

4th. That this people immersed in a degree of ignorance that is scarcely to be exceeded, and credulous in the extreme are particularly open to the arts and delusions that may be practiced on them by factious, and designing Men.

5th. That they are at this moment compleatly in the hands of a party of such factious and designing Men.

6th. That the whole Proceedings of this Party are calculated to alienate the people from any attachment they might be supposed to entertain for a Government under which they cannot but confess they have enjoyed the most perfect security, liberty and prosperity, and to pave the way for their return to their ancient connection with that which they esteem their Mother Country.

7th. That there is reason to fear that they have been successful in their attempts, and that the People do look forward to a change in their Government.

8th. That the Clergy under the general influence of attachment to France are further from religious motives decidedly our Enemies.

9th. That the Party who have the lead in the Country have also the compleat command of the House of Assembly, and are therefore placed in a situation particularly favourable to their views, and of consequence in the same proportion dangerous to His Majesty's Interests.

10th. That from the composition of the House of Assembly, it is likely that it will ever be in the hands of any party who may have a view in taking the direction of it; and that Government possesses no influence by which such view, whatever it may be, can be counteracted.

11th. That from prejudice, jealousy and ignorance, it is little to be expected that the House as at present constituted will accede to measures that may advance the real prosperity of the Colony.

12th. That the Government is equally destitute of all influence over the Clergy with whom it has scarcely a connection, and that this influence is entirely in the hands of an individual who holds his power under the confirmation at least of a foreign authority, which authority is now under the compleat direction of our inveterate Enemy.

* * * * * *

The first and most obvious remedy that presents itself, is to deprive them of the constitution, as they term it, that is of that representative part of the Government which was unquestionably prematurely given them—neither from habits, information or assimilation, with the Government of England, were they prepared for it, nor was this circumstance of their unprepared state unforeseen by many of the best informed of the Canadians themselves, who opposed its being granted to them. It was in fact brought about by the English part of the Inhabitants, who in their Enthusiasm for the Constitution which they so justly Esteemed as it exists in their own Country, could not conceive that any inconvenience, or any thing but happiness, and prosperity, could result from its establishment elsewhere. The since Catholic Bishop Denaud a very worthy Man, observed at the time to an English Gentleman who was very warm on the subject, (tho' now quite the reverse) "You do not know my Countrymen, they are not at all prepared for the Constitution you wish to give them, once let the rein loose, and be assured they will never know when to stop."

I am perfectly aware my Lord of the delicacy of such a measure as is here alluded to, and of the possible difficulty that might attend it; It is not however I assure your Lordship without giving the subject the utmost consideration in my power, or without giving due weight to the Importance of such an opinion, that I venture to say, that nothing short of that measure will afford just grounds of hope of retaining the province under the subjection of Britain, or of the preservation of its tranquility, and the furtherance of its prosperity; The first object will always be to a certain degree precarious, 250,000 people decidedly animated by a foreign attachment, must always be subjects of doubtful continuance. Time may possibly alienate that foreign attachment, but religion is one great bar to the hope, and no one step has ever yet been pursued that could foster the expectation: but however precarious our hold may be, is it not incumbent on us to do away a measure, of which the consequence was certainly not foreseen, but from which every facility, and every advantage is given to the attempt to deprive us of that hold; that Spirit of independence, that total insubordination among them, that freedom of conversation by which they communicate their Ideas of Government as they imbibe them from their Leaders, all which have increased wonderfully within these last five or Six Years, owe their origin entirely to the House of Assembly, and to the intrigues incident to Elections. They were never thought of before; In the Assembly too, the leaders of any party who may have a revolution in view will always be found, and from them faction will ever spread; The People are always taught to look up to the House on every occasion, and to consider it as the tutelary Genius that watches over the welfare of the Country, they will very soon consider obedience as a duty, and will be lead to Mutiny before they are aware that they are committing a Crime.

Having already observed to your Lordship, that I am aware of the delicacy, and difficulty of the measures alluded to, I have only on that head to add that here I do not think it would meet with much of the latter; The English are decidedly for it, among the Canadians themselves it is considered as far from improbable, nor is it without its partisans. That it would however occasion considerable clamour, and that attempts might be made to create disturbances upon the occasion, I have no doubt but for the latter, the people are at this moment unprepared, and a very little previous precaution would be sufficient to prevent serious danger.

Next to this great measure, that which is most generally looked up to, is the Reunion of the Two Provinces, so as to Balance the Canadian Party in the House. Of the success of this measure I confess I have doubts. It would produce a heterogeneous mixture of opposite principles and different interests, from which no good could be expected, and if it did not avert, I should apprehend it might accelerate the evil. I am more inclined to keep the Province of Upper Canada as a foreign, and distinct population, which may be produced as a resource against that of this Country in case of necessity, It must always be interested in

opposing revolution of every sort here, the great distance and general poverty of the people, appear to me, further obstacles to such a measure scarcely to be overcome.

It has been suggested that by a new Division of the Province new Counties might be formed in that part now distinguished by the general name of the Townships, from whence Members might be furnished with the same view of Balancing the Canadian Party; this seems to me more practicable, at least than the proposed re-union of the Provinces, besides being in itself a measure that is in some sort required in Justice to the Inhabitants, who begin to complain of not being represented: the Canadian part of the Electors so infinitely outnumber them tho' confined to a much less extent of Country that they can never succeed, the only exception is the County of Bedford which is almost entirely composed of Townships, and from this County till the present election an English Member, has usually been sent, on this occasion it is a Canadian Member, with this exception not one Member has ever been returned from this very large tract.

But without the intervention of the Imperial Parliament, conferring on the Governor, and Council the Powers of altering the existing division of the Counties, and making a fresh one in proportion to the increasing numbers of Inhabitants, it will be impossible to effect even this measure; no consideration could I am convinced be offered to induce the present House, or any House that can be formed, to entertain, the proposal for a moment.

Short of the decisive step of taking away the House altogether, one or other of these two measures either of reuniting the Provinces, or of forming a new division of the Counties seems to offer the only option, from which a hope can be entertained of rendering that House less capable of doing mischief; when I say this, I mean as offering the only expectation of ever effecting a Balance, to the Canadian Party, but under any shape in which it may be thought proper to continue the House, the enactment of a qualification with respect to the Representatives seems to be indispensably necessary, It really My Lord appears to me an absurdity, that the Interests of certainly not an unimportant Colony, involving in them those also of no inconsiderable portion of the Commercial concerns of the British Empire, should be in the hands of six petty shopkeepers, a Blacksmith, a Miller, and 15 ignorant peasants who form part of our present House, a Doctor or Apothecary, twelve Canadian Avocats, and Notaries, and four, so far respectable people that at least they do not keep shops, together with ten English members compleat the List; there is not one person coming under the description of a Canadian Gentleman among them.

The qualification that I think best adapted to the circumstances of the Country, would be one hundred pounds Currency, clear annual revenue arising from Land actually the property of the person presenting himself, for twelve Calendar Months previous to the day of election, or two thousand pounds Currency in personal property clear of all debts or demands.

With respect to a qualification for the Electors, tho' I am clear that such would be advantageous, and that the present one as established by the Constitutional Act is of little use, yet I feel much greater difficulty in proposing an alteration, forty shillings yearly value of their lands, scarcely excluded one farmer in a thousand, in fact, nearly every head of a family possesses a farm, and every farm is of a value exceeding that amount; the farms in general run so nearly of the same value, or vary only on account of being in a more or less favorable part of the Province, that any qualification under the general average, would bear the right of suffrage very near where it now is, and if it were established at a higher rate, it might perhaps narrow the right below its fair limits; It undoubtedly would be desirable that the very lower class should be excluded, but I think the number is not yet so great as to induce the risk of what would be a greater inconvenience, to effect their exclusion, for I should consider as such the reducing the number of Electors within too narrow bounds.

In the meantime however an opportunity appears to me to present itself by which much may be done towards keeping the House itself within proper bounds; by shewing it, that its proceedings are watched, and that it will not be suffered to outstep those limits by which its subordination to the Imperial Parliament is established, while it would tend to manifest that subordination to the people, and perhaps lessen the confidence they may possess in their leaders, by shewing them that they are not all powerful, and that they may be in the wrong.

The House by rendering a certain class of His Majesty's subjects ineligible to

a seat, by a vote of their own, has clearly violated the Act of the British Parliament by which they themselves exist, and should this assumption of theirs be submitted to, they will successively vote every class of His Majesty's servants to be ineligible, I do not speak this hypothetically My Lord, as what they may do, I mean it Literally as what I firmly believe they will do. I have not a doubt that much good would result from a retaliatory act of the Imperial Parliament forbidding the Governor to permit the House to proceed to any business, of any sort whatever, and directing him to prorogue, or dissolve them, as he may see occasion, whenever they attempt to proceed to any vote, or any other motion, except that of rescinding their resolve, and expunging it from their Journals, It would be done without a moment's hesitation, It would teach them caution in future, and it would make them view their situation in a different light from what they do now.

This correction proceeding from Parliament would certainly be the most effectual; If however from reasons which are beyond my competency in judging, it should not be thought advisable to move such a measure in the Imperial Parliament, It might perhaps be nearly as effectual, if I were authorized to recommend it in His Majesty's Name, should His Majesty in His wisdom permit me so to do, In this case I presume the message to be delivered would be prescribed to me, otherwise, I should express His Majesty's confident hope and expectation that they would see the expediency of proceeding immediately, and in the first step to a measure required of them, upon every principle of Justice to the people, and of deference to the Imperial Parliament, and in the event of their attempting to enter on any other business whatever, or even admit of a motion other than what might be necessary for the purpose of carrying His Majesty's recommendations into effect, I would immediately prorogue them, and should they show the same spirit of resistance a second time, which is not to be expected, I would dissolve them again. Should I adopt this course as of myself, under His Majesty's instructions tho' without His name, I fear it would produce infinite confusion and an endless controversy; they would certainly resist it in the first instance, how far they would carry their resistance it is impossible to say—but tho' they might comply at last and probably would, they would accompany that compliance with resolutions and proceedings that would only tend to keep us at variance, and to impede all public business; and after all, the effect upon them, and upon the people, would fall infinitely short of what might be expected in either of the other ways to which I have alluded.

In adverting to the little means of influence that the Governor possesses, I am at a total loss how to propose any (except in the obvious instance to which I shall shortly allude) by which it may be increased. The Militia furnishes little or none, the great body of the officers, that is those of the Country Companies, is composed of Habitants, but a Shade removed above the others in intelligence, tho' they are chosen from the most respectable among them. They are generally speaking the first to whom the Agents of the Party address themselves, and they are represented to me as among the most disaffected of the Province, as Credulous as their Comrades they listen to, and believe what is told them, while under the same infatuation of mistrust of every body of an Order higher than themselves, there are no means of disabusing them; I am certain if I were to dismiss every officer against whom information has been given me, I should change one third of the Militia of the Province.

Unfortunately My Lord, the great source of not only the most extensive but also of the most powerful and useful influence is in the hands of an individual who is himself as I am assured, (and that from no bad authority) at this moment a Suffragan of an Archiepiscopal See in France; I have already adverted to the power exercised by the Bishop in the appointment and removal at his pleasure of the Clergy of this province.

Upon careful enquiry into the subject, I find that previous to the Conquest, the Bishop did exercise the right of appointment, In 1667 a Royal Edict gave the right of patronage to the Seigneurs or founders of the Church, but a subsequent Edict of 1699 gave it to the Bishops, but in Order to render this matter more clear I shall enclose a Memorandum given me on the subject by the Chief Justice.[1]

His Majesty's Right to the nomination is clear and incontestable, so much so that were a Habitant to refuse to pay his tythes, The Church might excommunicate him, but for want of that nomination, it is held that the Curé could not

[1] See Doughty and McArthur, p. 399, note 2.

in any of His Majesty's Courts of Law compel him to pay; The resumption of this right appears to me to be indispensable to any hopes that may be entertained of retaining the dominions of the Colony, and this I confess seems to me also to be the moment for affecting that resumption; It may be accomplished now, twenty years hence it will be more difficult if not impracticable, but the truth is the danger presses, this influence is universally believed and I believe it myself, to be now silently working against us; I do not know that the proposed change would turn its current, but I am sure it would lessen the force of it very much.

The Person who at present exercises the Episcopal functions,[1] is not I think of a turbulent disposition, but he is a Man of great ambition, and some art, I doubt whether the former is not such as to preclude any great hope of succeeding with him by a negotiation voluntarily to resign the Post he now holds, I am inclined to believe that he himself would prefer that his submission should bear the appearance of an Act of necessity, under the power of an Act of the Imperial Parliament, or of the just exercise of His Majesty's Right, at the same time however, if, whether it be accomplished by negotiation, or otherwise, He comes into it with a good grace, I Imagine it will be thought reasonable that his allowance should be increased, He has now only £200 a year, it would not be amiss to hint to him, that his Salary would be increased to the extent that His Majesty in the exercise of His Liberality might think proper to permit. On this very important subject, permit me My Lord to refer to a letter from Sir Robt. S. Milnes together with a Memorial from the Bishop, copies of which I enclose; From some circumstances that occurred at that moment, no instructions were sent here in consequence, otherwise there is no doubt that the measure might have been effected.

As to the Curés themselves, it is understood that they are at present *rather* uneasy at the power exercised over them, and the obvious amelioration of their situation, would I think soon reconcile them to the change; It would be proper to give them a free hold in their livings, of which they could not be deprived unless it were in consequence of the sentence of the Bishop, who on a complaint against a Curé referred to him by the Government, should be empowered to call into his assistance his Grands Vicaires, and to examine into it, from which sentence however, the party should have his appeal in His Majesty's Courts; it is thought that it would be dangerous to give him the right of enquiry into Complaints without their being referred to him by the Government, the removal from a living to a better, to be of course at the pleasure of the Crown. It must be recollected that the appointment of the Grands Vicaires, must also rest with the Crown, at present they are named by the Bishop without even the Ceremony of presenting them to the Governor.

The resumption of the Lands held by the Seminary at Montreal would in like manner tend to an increase of the influence of Government, and would to a certainty lessen that of the self created community, in whose possession they now rest, the right is incontestable, and they are so sensible of it, that they make a rule of dropping all claims by which the discussion might be brought into Court, The Majority of the present Members of the Institution are French emigrant Priests, and are not amongst the least dangerous persons in the Colony; the Person at the head of it particularly is of that description, a very able, but a very artful designing Man, whose predeliction for France is not doubted: the Estate under proper management would probably produce ten thousand pounds a Year, and four would be an ample allowance to them to carry on their Establishment; The Seminary of Quebec is also in the possession of large property, to which they have an undoubted Claim, and the two together, form an ample provision for the Education of their Youth.

I will not detain your Lordship any further by a word more of apology for the extreme length of this dispatch, the occasion has seemed to me to require it, and I am yet sensible of the very deficient manner in which I have treated the subject, which I have felt it to be my duty to undertake; to remedy this deficiency, I have confided my dispatch to Mr. Ryland [2] my Civil Secretary, this Gentleman has been in office here seventeen years, during the greater part of which, he has been in the Station he now holds under my administration. He

[1] Joseph Plessis.

[2] Herman Witsius Ryland (1760–1838) an Englishman, who held several official appointments under various governors. He had considerable influence over Milnes, and was sent on an official mission to England by Craig.

possesses my entire confidence and I am persuaded is most perfectly qualified to give every Information that your Lordship may desire, my motive indeed for sending him is that your Lordship may have a more perfect, and detailed account than it is possible to convey in a letter however long it may be.

I have the Honor to be,
My Lord,
Your Lordship's most obedient humble Servant.
J. H. Craig.

## LXVI

## LIVERPOOL TO CRAIG

[Trans.: Doughty and McArthur.]

Downing Street, 12th Sepr., 1810.

Sir,

Your dispatches have received all the consideration to which they are entitled from the very important Information contained in them—And from the very clear and able manner in which you have discussed the different Topics connected with it.

I proceed now to communicate to you the Sentiments of His Majesty's Government, upon the Points which you have brought under their consideration, in the order in which they appear to arise.

It is much to be regretted that the Constitution established for the Province of Lower Canada, by the Act [1] of the British Parliament of the year 1791, should appear to have so entirely disappointed the expectations of those who introduced it, and that the Conduct of the Assembly should afford such strong ground for concluding that the Constitution was not only repugnant to the established habits and prejudices of the Canadians, but likewise ill-calculated to produce those benefits to the English Settlers which they were led at the time to suppose would result from it.

But even supposing that His Majesty's Government should feel the objections to the Constitution of Lower Canada, as established at present—and the Inconveniences which you describe to arise from it, as strongly as you do, yet it would be a question of great delicacy and difficulty, how far, under the present Circumstances it would be justifiable to interpose by the Authority of Parliament for the purpose of abolishing or even of altering it.

The Act of the 31st of the King does not profess itself to be temporary or experimental—It contains in it no Clause, by which the Right of Parliament to alter the Constitution is specially reserved. It appears clearly from the 14th Clause, that it was the intention of Parliament that in ordinary cases at least, such alterations as Circumstances might render necessary should be made by the Assembly of the Province, in concurrence with the Council and Governor—And tho' the Parliament of the United Kingdom under its right of general legislation for all parts of the Empire, must be considered as unquestionably possessing within itself, the inherent Right of altering the Constitution of any of its Colonies or Settlements, if it shall be found necessary for the safety or prosperity of the Empire, it would probably be thought by Parliament to require a very strong practical case, to justify the exercise of such a right in the case of Canada, after such an Act as that of 1791—And notwithstanding the Evil Spirit which has made its appearance, and is too evidently gaining ground in the Province notwithstanding the intemperate Proceedings of the Assembly on more than one occasion, His Majesty's Government doubt very much whether upon the Information they at present possess, such a Special Case could at this time be laid before Parliament as would induce Parliament after having so recently established the Constitution, to interfere by its Authority for the purpose of altering it.

His Majesty's Government are convinced that an Appeal on this Subject to Parliament, at the present time, would be highly inconvenient, and as it might even be attended with very mischievous consequences, They are clear that unless it should become absolutely and indispensably necessary, it ought to be avoided. This opinion receives additional weight from the consideration that such a

[1] No. LIV.

diversity of sentiment appears to prevail amongst the best informed Persons in Canada as to the nature of the Reform which it would be most expedient to adopt, and as to the efficacy of the different Remedies if adopted.

In such a state of things, it would be in vain to calculate with any degree of confidence what might be the determination of Parliament—And the most fatal Effects might be produced in Canada from the ferment which would be excited by discussions in Parliament upon this Subject, if they were not followed by the most decisive and effectual Measures, and supported by such a general concurrence of opinion as might reasonably ensure a perseverance in them.

I come then to the next Question, What under the Circumstances above stated is the course most fitting to be adopted.

His Majesty's Government have no difficulty in delivering it as their opinion that the most advisable course, if practicable would be to endeavour to obtain for Government by a frank exposition of the liberal and beneficial views of His Majesty, and by every Measure of conciliation—the support of the Assembly as at present constituted—His Majesty's Government understand that the English Representatives in the Assembly, as far as their numbers extend, may be considered as generally favorably disposed towards Government—And they most earnestly recommend that every Endeavour should be used by personal communications, to conciliate the most moderate amongst the Canadians, and to reconcile them to the fair support of the Government against the violent designs of the disaffected and factious, as the best means of promoting the Prosperity of the Province and of averting Measures to which Government may otherwise be indispensably compelled to resort.

If however every Effort of this nature should prove abortive they do not see that there exists any such necessary dependence of the Executive Government in Canada upon the House of Assembly, as need prevent your adopting consistently with the most strict and rigid adherence to every legal form—a firm, temperate but persevering resistance to all the Encroachments and usurpations of the Assembly.

It is provided by the 31st of the King that the Assembly should be called once every year,[1] and it is impossible not to acknowledge that by such a Provision the Parliament intended to secure to the Colony the important Benefits which cannot fail to result from the Opportunity which is thereby afforded of collecting the Sentiments of the Community, and of providing by occasional legislation such Improvements as from time to time may be rendered necessary.

These are undoubtedly most important considerations which ought never to be lost sight of in the view which is to be taken of this Subject, but notwithstanding these considerations there does not exist any absolute necessity as in the case of the Parliament of the United Kingdom, that the Assembly should continue sitting, after it had been once convened.

It would indeed have been wholly inconsistent with the nature of a Colony, and its necessary connection with the Mother Country, that the Executive Government should have been placed in the same state of dependence upon a local Legislature, as most usefully subsists reciprocally between the Crown and the Parliament of the United Kingdom.

In Canada therefore, the Executive Government is not dependent upon the Assembly, either for the Supplies requisite for defraying the Expences of the Civil Government of the Province nor for the Military force essential for its security and protection.[2]

The Military Force which is judged necessary for these purposes is provided from home, and I understand that the permanent Revenue of the Province, together with what it has been usual to draw from the Military Chest is fully sufficient for all the Expences of the Civil Government.

The Executive Government therefore, in Canada, is in no way necessarily dependent upon the House of Assembly—All Laws to regulate the Commercial Intercourse between Canada and other parts of the World, may according to the Constitution, be passed by the Imperial Parliament.[3]

There may indeed be some Laws which have been passed by the Legislature of Lower Canada for a limited time, the Expiration of which, might prove inconvenient to the Government. With respect to the Alien Law, this observa-

[1] See Constitutional act, § 27 (No. LIV).

[2] A contemporary and official clear-cut statement of the exact place of the assembly in the scheme of government.

[3] See Constitutional act, § 46 (No. LIV).

tion applies only to a limited extent—for as long as the War continues, the Crown and its Representatives have a clear and undoubted Right by common Law, to send all alien Enemies out of the British Dominions, without the necessity of any Legislative Act for that purpose.

The Expiration of the Law for the safety of the King's Government, by suspending the Habeas Corpus, might be some inconvenience, but it does not appear to be of a sufficient magnitude to counterbalance the advantages which would arise from the course of proceeding now proposed, compared with that of any other which has been hitherto suggested.

With respect to Laws for internal Improvement, the want of them will be much to be regretted by the Government and by all who are interested in the welfare of the Province. The Inhabitants of the Province must feel, in the first instance, the inconvenience arising from the interruption of all Legislative Proceedings of this nature, and it is to be hoped that they will be led to ascribe it to its true cause—the factious and intemperate Conduct of their own Representatives.

If this Sentiment once gains ground amongst the Inhabitants of the Province it may operate more powerfully than any other Measure in bringing them to a due sense of their Interest and their duty.

His Majesty's Government therefore altho' they see much that is deeply to be regretted in this state of things, see no reason why the Executive Government should feel itself essentially embarrassed in its course of Action upon the present occasion. If the Assembly on being convened annually, as by the Law is necessary, should adopt any violent or intemperate Proceedings, the Governor should prorogue or dissolve them.

That Prorogation or dissolution with whatever inconvenience it may be attended to the Province, must be ascribed to those whose misconduct rendered it necessary.

It will be of infinite importance that it should not be resorted to, till the cause of it should be evident to the whole Province—And the more active the friends of Government may be in endeavouring to bring forward useful, and therefore popular Measures—the more ground the Province in general will have to regret the Prorogation or dissolution of the Assembly. His Majesty's Government earnestly recommend to you the Prorogation rather than the dissolution of the Assembly, unless there is reason to believe from a change in the temper of the People, that a more favorable Assembly will be elected.

A Prorogation has equally the effect with a Dissolution of quashing every Proceeding of the Assembly—And it is not at all desirable that the Province should be kept in a continual state of ferment by Annual Elections, when by Law they are only necessary, once in four years.

I have etc.

LIVERPOOL.

## LXVII

## STATEMENT BY RYLAND TO MR. SECRETARY PEEL

[Trans.: Christie *op. cit.*]

11th February, 1811.

The Assembly of Lower Canada, ever since the establishment of the present constitution, has been constantly endeavouring to acquire privileges beyond what was evidently intended by the Act of Parliament of the 31st of His Majesty,[1] to be given to that body. But the disorganizing tendency of these attempts did not become apparent till towards the beginning of the year 1807, when a party was formed under the auspices of a few individuals of desperate fortunes, which soon obtained a preponderating influence in the House. Funds *of a very suspicious origin* were provided for the establishment of a press, and a paper intituled "Le Canadien"[2] was published weekly in French, at a very low price, and circulated with uncommon industry throughout the Province. The chief object of this paper, though concealed under frequent professions of loyalty and devotion to His Majesty's person and Government, was to villify and bring into contempt the King's Representative, to persuade the mass of the people that the House of Assembly was superior to, and independent of the other branches of

[1] See No. LIV.

[2] See p. 229.

the Legislature, and to excite in the breasts of the *French Canadians*, the bitterest enmity against the *English* part of the community.

With a view of trying how far the House would be permitted to go, motions were frequently made implying a *right* in the Assembly to superintend and control the Executive power, and more particularly to decide by their own resolves on the privileges to which that body might lay claim.

The right of prohibiting, not only individuals, but certain classes of His Majesty's subjects, from being elected Members of the Assembly, was attempted in the Session of 1809 to be carried by a simple resolve of the House, and such was the nature of the proceedings on the occasion, that the Governor, with the unanimous advice of the Executive Council, judged it expedient suddenly to prorogue the Provincial Legislature, and soon afterwards to dissolve the House of Assembly.

By the time of the general election, however, the influence obtained by the French party through the means of the paper above mentioned, became so powerful as to secure even a more decided majority in the House than it had before, and in the subsequent Session of 1810 after two Bills only had been passed, the Governor found it expedient again to have recourse to a dissolution.

It is to be remarked that, in the same Session of 1810, a resolve was proposed and carried by the leading democratic members, "That the House of Assembly "ought to vote, during that Session, the necessary sums for defraying the Civil "expense of the Government of the Province."[1] This was followed up by separate addresses to the King, to the Lords, spiritual and temporal, and to the Commons of Great Britain, in Parliament assembled, declaring the intention of the House of Assembly to take upon itself "to pay the Civil expenditure of the Provincial Government."[2]

The real motive for this measure was too obvious to escape the attention of the most superficial observer; indeed, the party did not hesitate to boast to their adherents out of doors, that after having once obtained the *right* of managing the Civil expenditure, their intention was, to reduce the salaries of the public officers to such a standard as the House should judge proper, and finally to exercise an unlimited control over the Executive power.

These extraordinary circumstances induced the Governor in Chief to make a special representation to the Earl of Liverpool of the state of the Province, and to send home his Secretary (Mr. Ryland) with his despatches, "in order that "he might be at hand to afford every explanation and every information in his "power, that His Majesty's Ministers might require concerning the several objects "on which he had written."

Mr. Ryland reached London the first week in August, between which time and the closing of the September mail he had the honor of repeated interviews with the Earl of Liverpool, who entered very minutely into the several matters submitted to him by Sir James Craig, the Governor in Chief.

The Governor having recommended an interference on the part of the Imperial Parliament for the purpose of checking the efforts of a party whose proceedings had all the appearance of being directed by *French influence*, this subject was taken into immediate consideration, and Mr. Ryland was desired to attend a meeting of the Cabinet Ministers for the purpose of answering enquiries concerning the political state of Lower Canada.

Previous to the closing of the September Mail, the Earl of Liverpool did Mr. Ryland the honor of communicating to him a despatch[3] to Sir James Craig, from which it appeared, that His Majesty's Ministers did not judge it expedient to make the affairs of Lower Canada a subject of Parliamentary discussion. At the same time His Lordship was pleased to intimate, that there were several objects of great importance proposed in the letters from the Governor in Chief, which did not require Legislative interference, although essentially connected with the power and influence of the Crown in Lower Canada, and these His Lordship expressed an intention of bringing under discussion in the course of the winter; but the distressing event of His Majesty's indisposition has hitherto prevented these matters from being taken into ultimate consideration.

The principal points here referred to are:

First.—The assumption, on the part of the Crown, of the patronage of the Romish Church, as directed by the Royal Instructions, but hitherto neglected

[1] Ryland quotes from *The Journal of the House of Assembly*, February 10, 1810.
[2] The address is given in Doughty and McArthur, p. 366.
[3] i.e. No. LXVI.

to be carried into execution by the several Governors of the Province. Sir James Craig's opinion with respect to the most eligible means of carrying this measure into effect was stated in a letter to Mr. Secretary Peel, dated the 4th of August last.

Second.—A decision respecting the estates formerly possessed by the Jesuits in Lower Canada, and those which, at the time of the conquest of the Province, were held by the Society of St. Sulpicians at Paris, commonly called the Montreal Seminary Estates. This extensive and very valuable property, the right to which is indisputably vested in the Crown, would, under able management, not only afford ample means for the purposes of public education, but the surplus monies arising therefrom, if added to the casual and territorial revenue of the Crown, and to the permanent duties already established by Acts of the Legislature would, there is reason to believe, soon render the Provincial funds, that are at the disposal of the Crown, adequate to the payment of the ordinary expenses of the Civil government, and preclude the necessity of having recourse either to the House of Assembly, or to the Military Chest (as hitherto has been customary), to make good the yearly deficiencies.

Third.—The adoption of a system for the more speedy settlement of the waste lands of the Crown, by which means the English population, the agriculture, commerce, and revenues of the Province might be rapidly increased.

By the plan adopted in Upper Canada for the settlement of the waste lands, a population of upwards of eighty thousand inhabitants has, within the last sixteen years, been added to that Colony, whilst in the Lower Province the increase from this source, during the same period, has not amounted to twenty thousand.

Should the Earl of Liverpool deem these matters of sufficient importance to claim the immediate attention of Government, Mr. Ryland is led to hope (from his having held the Situation of Governor's Secretary in Lower Canada ever since the return of Lord Dorchester to that Province in the year 1793, and the knowledge his official duties have given him of all which has passed concerning them) that he might be enabled to afford some assistance towards bringing them to a final conclusion; and he would be happy to be employed during the remainder of his stay here in any way in which His Lordship may think it possible for him to contribute to the accomplishment of the important objects which the Governor in Chief of His Majesty's North American Provinces had in view in sending him to England.

H. W. R.

## LXVIII

## AN ACT DISQUALIFYING JUDGES FROM SITTING IN THE HOUSE OF ASSEMBLY OF LOWER CANADA, 1811

[Trans.: Doughty and McArthur.]

AN ACT for declaring Judges to be disabled and disqualifying them, from being elected, or from Sitting and Voting in the House of Assembly.

(21st March, 1811.)

Whereas it is expedient to make effectual provision for excluding Judges of His Majesty's Courts of King's Bench within this Province from being elected or sitting and voting in the House of Assembly of this Province, Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council, and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of An Act of the Parliament of Great Britain passed in the thirty-first year of His Majesty's Reign, intituled, "An Act to repeal certain parts of an Act passed in the four-"teenth year of His Majesty's Reign," intituled "*An Act for making more "effectual provision for the Government of the Province of Quebec in North America,*" and to make further provision for the Government of the said Province," And it is hereby enacted by the authority of the same that from and after the passing of this act, no person who shall be a Judge of either of His Majesty's Courts of King's Bench within this Province, shall be capable of being elected or of sitting, or voting, as a Member of Assembly in any Provincial Parliament.

## LXIX

## RIGHT OF HOUSE OF ASSEMBLY TO INITIATE ALL MONEY BILLS

[Trans.: Doughty and McArthur.]

### Resolutions of the Legislative Council of Upper Canada

Saturday, 21st March, 1818.

1. Resolved, that in making amendments to a Bill sent up from the Commons House of Assembly, intituled "An Act to make further provision for regulating the trade between this Province and the United States of America" this House acted upon the principle that its concurrence was necessary to pass the same, which it could not, in the exercise of its judgment and discretion, without amendment.

2. Resolved, That the Commons House of Assembly having hitherto rejected all Conference on the subject of Money Bills, no course remains to the Legislative Council but implicitly to submit to its judgment and reason, or to reject wholly the offered Bill; unless the House of Commons will continue as it has heretofore in many cases done, even during the present Session, to reject the amendments of the Legislative Council without notice, and re-enact the matter, so as to receive the concurrence of the other branches of the Legislature.

3. Resolved, That this House does not consider the necessary amendments to a Money Bill as a breach of the Privileges of the Commons House of Assembly; nevertheless as it is so considered by that House in the said Resolution, the Legislative Council will forbear all amendments to Bills for raising or levying money, and merely withhold its assent to the same.

### Resolutions of the House of Assembly, Upper Canada

23rd March, 1818.

1. Resolved, that the Commons have never questioned the principle either of constitutional right of necessity of the concurrence of the Legislative Council in passing Bills, but do insist that the exercise of its judgment and discretion on all Bills granting aids and supplies to His Majesty, or imposing burthens upon the people is by uniformly acknowledged precedent confined to assent without making any amendments, or to the rejecting totally such Bills; and that the admission of a contrary principle upon the part of the Commons would be surrendering a constitutional right always exercised by this House, and from time immemorial by the Commons of Great Britain, which this House will never consent to.

2. Resolved, that the foregoing resolution, is equally applicable to meet the reasoning of the first part of the second resolution of the Legislative Council, and that in all cases when this House have rejected amendments of the Legislative Council without notice, and re-enacted the matter so as to receive the concurrence of the other branches of the Legislature, this House have done so from the most conciliatory disposition and regard for the interests of the Province, wherever the same could by strained construction be admitted; but in no instance where the amendments have been made to a Bill the direct object of which has been the raising, levying, or appropriating money.

3. Resolved, that the first part of the third resolution of the Legislative Council, avowing that they do not consider the necessary amendments to a money Bill as a breach of the privilege of the Commons House of Assembly, cannot be considered by this House without weakening that right which, in the true spirit of our constitution, solely and exclusively appertain to this branch of the Legislature.

4. Resolved, that it is the opinion of this House that the collected consideration of the three resolutions of the Legislative Council require the following avowal.

That this House consider it as their constitutional right to commence all money Bills, either granting aids and supplies to His Majesty or imposing any charge or burthen whatsoever upon the people, and to direct, limit, and appoint in such Bills the ends and purposes, considerations, limitations, and qualifica-

tions thereof, and that such grants, limitations and dispositions ought not to be interfered with by amendments in the Legislative Council, because such has never been permitted by the Commons of this Province, nor is it the usage and practice of the British Parliament.

### Resolutions of the Legislative Council of Upper Canada

Tuesday, 24th March, 1818.

The Honorable the Legislative Council, on consideration of the Resolution of the House of Assembly, delivered yesterday at the Bar of this House,

1. Resolved, that the Legislative Council and House of Assembly of the Province of Upper Canada are co-ordinate branches of a Limited Legislature, constituted by the Statute enacted in the thirty-first year of His Majesty's Reign.

2. That all powers, immunities and privileges of either branch are derived from that Statute, and extend to their respective advice and consent to His Majesty, to make laws not repugnant to that Act for the peace, welfare, and good Government of the Province.

3. That in adopting the order and course of proceeding to advise and consent to laws, this House does not assume the powers, authority and privileges of the Upper House of Parliament, grown out of the practice of ages, and unsuitable to the circumstances of this Colony.

4. That the House of Assembly, adopting as its type the Commons House of Parliament, and claiming all the powers, immunities and privileges thereof, is not justified by the words or spirit of the Constitution, more than the Legislative Council would be justified to assume for itself and its members the powers, immunities and privileges of the Upper House of Parliament.

5. That the origin of all supplies in either House or exclusively in the House of Assembly must be indifferent so long as either house retains the power of rejection, that the exercise of the right to amend an original Bill is equally indifferent except that without the exercise of that right, or the resort to amicable conference between the two Houses time is wasted and the Public service delayed.

6. That the House of Assembly did by Resolutions delivered at the Bar of this House declare that it would not accede to any conference on the subject of a money Bill.

7. That the amendments made to the Bill intituled "An Act to make further provision for regulating the Trade between this Province and the United States of America," by the Legislative Council, were to conform to a national regulation of trade imparted to both Houses by His Majesty's Government to reduce the burthen of the people of whom the individuals of this House are a part only distinguished by the duty imposed on them in their Legislative capacity to protect defend and support the interest of the whole.

8. That having no means of interchanging opinion with the House of Assembly, but by way of conference or amendments, the Legislative Council does not consider it reasonable that such amendments should be treated as a breach of privilege, and that having declared by its resolutions transmitted to the House of Assembly that it would forbear amendments to money Bills such resolution ought to afford reasonable satisfaction to that House (even if its privilege had been violated) and restore the course and harmony of proceeding in the Public business.

### Resolutions of the House of Assembly of Upper Canada

26th March, 1818.

1. Resolved, *nem. con.* that this House, in persisting in their right to reject all amendments made by the Legislative Council to Bills for raising and appropriating moneys, and to decline all conferences thereon, are assuming to themselves no new privilege; but are only adhering to the form of proceeding which has been maintained from the first establishment of the Provincial Legislature, and in which they have taken for their guide the representative form of constitution in the Mother Country, by which that of this country is modelled, and by which the Legislative Council have in all their proceedings equally governed themselves; whatever it may suit their present purpose to disclaim.

2. Resolved, *nem. con.*, that as this House desire to make no innovation, so they are determined to suffer none, but will persist in maintaining in all their deliberations those rules which they have found established, and which, being

coeval with their constitution, they consider it would be as inconsistent with their duty as it is repugnant to their inclination to abandon.

3. Resolved, *nem. con.*, that the gracious Speech of His Majesty's Representative, John Graves Simcoe, Esquire, at the opening and prorogation of the first Parliament of this Province, and the answers thereto, be entered on the Journals of this House; that part of the Journals having been destroyed by the enemy in the late war.

## LXX

## PROPOSED ACT OF UNION, 1822 [1]

[Trans.: *Canadian Archives, Q.* 160.]

A Bill [as amended by the Committee] for uniting the Legislatures of the Provinces of *Lower* and *Upper Canada.*

Preamble.

WHEREAS in the present situation of the Provinces of *Lower* and *Upper Canada,* as such with relation to *Great Britain* as to each other, a joint Legislature for both the said Provinces would be more likely to promote their general security and prosperity than a separate Legislature for each of the said Provinces, as at present by law established;

So much of 31 Geo. 3, c. 31, as provides a Legislature for each of the Provinces of Lower and Upper Canada, repealed.

Be it therefore enacted by the KING's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, THAT so much of an Act passed in the thirty-first year of the reign of his late Majesty King *George* the Third, intituled, "An Act to repeal certain parts of an Act passed "in the fourteenth year of his Majesty's reign, intituled, 'An Act for making "'more effectual provision for the Government of the Province of *Quebec* in "'*North America,* and to make further provision for the Government of the said "'Province,'" as provides for the composing and constituting within each of the said Provinces respectively, a Legislative Council and Assembly, and for the passing of laws by the Legislative Council and Assembly of each Province, shall be and the same is hereby repealed, except in so far as the same or any of the provisions thereof, may by this present Act be continued or applied to the purposes of the joint Legislature to be constituted in manner hereinafter mentioned: Provided also, that so much of an Act passed in the fourteenth year of the reign of his said late Majesty, intituled, "An Act for making more effectual "provision for the Government of the Province of *Quebec* in *North America,*" as is repealed by the said Act passed in the thirty-first year aforesaid, shall be deemed and taken to be, and shall remain repealed.

Henceforth to be one joint Legislative Council, and one joint Assembly for both Provinces.

And be it further Enacted, That from and after the passing of this Act, there shall be within the said two Provinces, and for the same jointly one Legislative Council and one Assembly, to be composed and constituted in manner hereinafter described, and which shall be called "The Legislative Council and Assembly "of the *Canadas*;" and that within the said Provinces, or either of them, His Majesty, His Heirs or Successors, shall have power, during the continuance of this Act, by and with the advice and consent of the said Legislative Council and Assembly of the *Canadas,* to make laws for the peace, welfare and good government of the said Provinces, or either of them, such laws not being repugnant to this Act, nor to such parts of the said Act passed in the thirty-first year aforesaid, as are not hereby repealed; and that all such laws being passed by the said Legislative Council and Assembly, and assented to by His Majesty, His Heirs or Successors, re-assented to in His Majesty's name by the Governor-in-Chief in and over the said provinces of *Lower* and *Upper Canada,* or in case of the death or absence of such Governor-in-Chief, by the Lieutenant Governor of the Province of *Upper Canada* for the time being, or in case of the death or absence of such Lieutenant Governor, then by the Lieutenant Governor of *Lower Canada* for the time being, or in case there shall be no Lieutenant Governor at such time resident in the Province of *Lower Canada,* then by the person administering the government thereof for the time being, shall be and the same are hereby declared

[1] This act was withdrawn in the face of French-Canadian opposition and Upper-Canadian lukewarmness. Out of the debates issued the Canada Trade act (3 George IV, c. 119) which led to further disputes in relation to 18 George III, c. 12 (No. XXXIX). Petitions in connexion with the proposed union are in Brymner, *Report of the Canadian Archives* (1907), Egerton and Grant, *Canadian Constitutional Development.* See also Smith, W., 'Side Lights on the Attempted Union of 1822' (*Canadian Historical Review,* ii, pp. 38 ff.).

to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever within the said two Provinces.

Joint Legislative Council to consist of the present Members of both Councils.

And be it further Enacted, That the present members of the Legislative Councils of *Lower* and *Upper Canada* shall, by virtue of this Act, and without any new or other commissions for that purpose, constitute together the Legislative Council of the *Canadas*, which said members shall take precedence in the joint Legislative Council according to the date of the instruments by which they were originally summoned to the Legislative Councils of the two Provinces respectively; and that it shall also be lawful for His Majesty, His Heirs or Successors, from time to time, by an instrument under his or their sign manual, to authorize and direct the said Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, to summon to the said Legislative Council, by an instrument, under a seal to be transmitted by His Majesty to the Governor-in-Chief, or under any other seal which the said Governor-in-Chief shall be by His Majesty directed to use for the purposes of this Act, and which shall be called the Great Seal of the *Canadas*, and shall be applied only to the purposes directed by this Act, such other person or persons as His Majesty, His Heirs or Successors, shall think fit; and that every person who shall be so summoned to the said Legislative Council, shall thereby become a member thereof.

Other Persons may be summoned.

Such Persons only shall be summoned as directed by 31 G. 3.

And be it further Enacted, That such persons only shall be summoned to the said Legislative Council, as by the said above-mentioned Act, passed in the thirty-first year aforesaid, are directed to be summoned to the Legislative Council of the said two Provinces respectively; and that every member of the said Legislative Council shall hold his seat for the same term, and with the same rights, titles, honours, ranks, dignities, privileges and immunities, and subject to the same provisions, conditions, restrictions, limitations and forfeitures, and to the same mode of proceeding, for hearing and determining by the said Legislative Council all questions which shall arise touching the same, as are in the said Act, passed in the thirty-first year aforesaid, mentioned and contained, with respect to the members thereby directed to be summoned to the Legislative Council of the two Provinces respectively.

Governor to appoint and remove the Speaker of the Legislative Council.

And be it further Enacted, That the Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall have power and authority from time to time, by an instrument under the Great Seal of the *Canadas*, to constitute appoint and remove the Speaker of the said Legislative Council.

Joint Assembly to consist of the present Members of both, and to continue until 1 July 1825, unless sooner dissolved.

And be it further Enacted, That the members at present composing the Assemblies of the said two Provinces shall, together with such new members as shall or may be returned for either of the said Provinces respectively in manner hereinafter mentioned, form and constitute the Assembly of the *Canadas*, and shall be and continue until the first day of July one thousand eight hundred and twenty-five, unless sooner dissolved; and that in case of a dissolution of the said Assembly, or of vacancies occurring therein, members shall be returned from the same counties and places, and in the same manner, and in the same numbers, except as hereinafter otherwise provided, as now by law they are returned within the two Provinces respectively.

Act of Upper Canada, 60 G. 3, to continue in force.

AND whereas an Act was passed by the Provincial Legislature of *Upper Canada*, in the sixtieth year of the reign of his said late Majesty, intituled, "An "Act for increasing the Representation of the Commons of this Province in the "House of Assembly;" BE it therefore further Enacted, That the said Act, and all the provisions therein contained, except as hereinafter otherwise provided, shall remain in full force and effect, and shall be applied to the representation of the said Province of *Upper Canada* in the joint Assembly, in like manner as the same were applicable to the representation thereof in the Assembly of the said Province of *Upper Canada* before this Act was passed.

Governor of Lower Canada may erect new Counties, out of the Townships to be represented in the Assembly.

And be it further Enacted, That it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of the said Province of *Lower Canada* for the time being, from time to time as he shall judge expedient, from and out of that part of the said Province of *Lower Canada* which has been erected into townships since the number of representatives for the said Province was settled by proclamation, to form and erect new counties, by instrument or instruments under the Great Seal of the said Province, each such new county to consist of not less than six townships; and that when and

so often as any such new county shall be formed and erected as aforesaid, the Governor, Lieutenant Governor, or person administering the government of the said Province of *Lower Canada*, shall issue a writ for the election of one member to serve for the same in the assembly; and that whensoever the said Governor, Lieutenant Governor, or person administering the government as aforesaid, shall deem it expedient that any such new county, or any county heretofore erected within the said Province of *Lower Canada*, and at present represented by only one member, shall be represented by two members, he shall in like manner issue writs for that purpose: Provided always, that no subdivision of any counties now erected or to be hereafter erected within either of the said Provinces, except as hereinbefore provided with respect to the said townships, shall extend or be construed to extend to increase the number of representatives for such counties: Provided also, that the number of representatives for each province shall not exceed sixty.

No Act to alter the number of Representatives to be passed, unless by Two-thirds of both Houses.

And be it further Enacted, That no act by which the number of representatives of either Province shall be altered, shall hereafter be passed by His Majesty, by and with the advice and consent of the said Legislative Council and Assembly, unless the same shall have been passed by two-thirds at least of the members present at the question for the second and third reading of the same in the said Legislative Council and Assembly respectively.

Provisions of 31 G. 3, respecting Elections to remain in force.

And be it further Enacted, That all and every the provisions and regulations respecting the appointment and nomination, duties, privileges and liabilities of returning officers for either of the said Provinces respectively, and respecting the eligibility, qualification and disability of persons to sit as members in the said Assembly, or to vote on the election of such members, and respecting any oath to be taken by candidates or voters at such elections, and respecting all other proceedings at such elections, and respecting the times and places of holding such elections, as are contained in the said above-mentioned Act, passed in the thirty-first year aforesaid, except in so far as the said provisions and regulations are hereby in anywise altered, shall remain and continue in force in both of the said Provinces; and that all and every the provisions and regulations respecting the objects above enumerated, or any of them, which are contained in any Act or Acts of the provincial Legislatures, which are now in force in either of the said Provinces respectively, shall remain and continue in force within such Province, except as the same are hereby in anyways altered, until otherwise provided for by the joint Legislature.

Governor may summon a new Assembly.

And be it further Enacted, That when and so often hereafter as it may be necessary to summon and call together a new Assembly for the said two Provinces, it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, by an instrument under the said Great Seal of the *Canadas*, to summon and call together the said Assembly as hereinafter expressed and provided.

And shall issue Writs for the election of Members, as directed by 31 Geo. 3.

And be it further Enacted, That Writs for the election of members to serve in the said Assembly, shall be issued by the Governor, Lieutenant Governor, or person administering the government of the Province within which such members shall be chosen respectively, in the same manner and directed to the same officers, and returnable within the same period, as in and by the said Act made and passed in the thirty-first year aforesaid, is directed and provided.

Qualification in future to be real Property to the value of £500 sterling.

And be it further Enacted, That on the first general election of members for the said Assembly, which shall take place from and after the passing of this Act, and on all subsequent elections, whether general or for particular places, in cases of vacancy, which shall be holden in either of the said Provinces, no person shall be capable of being elected, who shall not be legally possessed to his own use and benefit, of lands and tenements within one or other of the said Provinces, of the value of Five hundred pounds sterling over and above all rents charges and incumbrances which may affect the same, such lands and tenements being by him held in freehold, in fief or in roture; and that every candidate at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, take an Oath in the following form, or to the following effect;

Oath to that effect.

"I, A. B. do Swear, That I am legally and *bona fide* possessed to my own use "and benefit, of lands and tenements within the Province of *Canada*, "of the value of sterling, over and above all rents charges and

"incumbrances which may affect the same; and that the said lands and tene-
"ments are by me held in freehold, in fief, or in roture [as the case may be];
"and that I have not obtained the same fraudulently, for the purpose of enabling
"me to be returned Member to the Assembly of the *Canadas*; and also that I am
"otherwise qualified, according to the provisions of law, to be elected and returned
"to serve as a Member thereof."

Provided always, That nothing in this Act contained shall be construed to affect any Act now in force in either of the said Provinces respectively, relating to the qualification (other than as respects property) of any candidate or voter at elections.

Persons swearing falsely guilty of perjury.

And be it further Enacted, That if any person shall knowingly and wilfully take a false oath respecting his qualification, either as candidate or voter at any election as aforesaid, and shall thereof be lawfully convicted, such person shall be liable to the pains and penalties by law inflicted on persons guilty of wilful and corrupt perjury in the Province in which such false oath shall have been taken.

Trials of contested Elections.

And be it further Enacted, That whenever hereafter any question shall arise touching the validity of the election or return of any person in either Province to serve in the Assembly, such question shall be tried in the Joint Assembly, according to the mode of proceeding now established by law in that Province in which the disputed election or return shall have been made, until a uniform course of proceeding shall be duly established for both Provinces.

Governor may summon Two Members of the Executive Council of each Province to the Assembly.

And be it further Enacted, That it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, if at any time he shall deem it expedient, to summon and authorize, by an instrument under his hand and seal, two members of the executive Council of each Province to sit in every Assembly with power of debating therein, and with all other powers, privileges and immunities of the members thereof, except that of voting.

Joint Legislature to be summoned, not later than 1st September 1824, and once every twelve Months afterwards.

And be it further Enacted, That the said Legislative Council and Assembly shall be called together for the first time at some period not later than the first day of September one thousand eight hundred and twenty-four, and once afterwards in every twelve calendar months, and that the said Governor-in-Chief, or in the case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall and may convene the first and every other session of the said Legislative Council and Assembly, at such places within either Province, and at such times, under the restrictions aforesaid, as he shall judge most conducive to the general convenience, giving due and sufficient notice thereof, and shall have power to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise whenever he shall deem it necessary or expedient.

Every future Assembly to continue five Years.

And be it further Enacted, That every Assembly hereafter to be summoned and chosen, shall continue for five years, from the day of the return of the writs for choosing the same, and no longer; subject nevertheless to be sooner prorogued or dissolved by the said Governor-in-Chief, or in case of his death or absence, by such other person, and in such order respectively as is hereinbefore directed.

Majority of Votes to decide.

And be it further Enacted, That all questions which shall arise in the said Legislative Council or Assembly, except in the cases herein otherwise provided, shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal, the Speaker of such Council or Assembly shall have a casting voice.

Oath prescribed by 31 G. 3, to be taken.

Provided always, and be it further Enacted, That no member either of the Legislative Council or Assembly shall be permitted to sit or vote therein, until he shall have taken and subscribed the oath prescribed for that purpose by the said Act passed in the thirty-first year aforesaid, before a person duly authorized to administer the same, as in and by the said Act is directed.

Royal Assent to be declared or withheld as prescribed by 31 G. 3.

And be it further Enacted, That any Bill which shall be passed by the Legislative Council and Assembly shall be presented for His Majesty's assent to the said Governor-in-Chief, or in case of his death or absence, to such other person, and in such order respectively, as is hereinbefore directed, who shall, according to his discretion, declare or withhold His Majesty's assent to such Bill, or reserve such Bill for the signification of His Majesty's pleasure thereon, subject always to the same provisions and regulations with respect to Bills which may either

be assented to, or from which His Majesty's assent may be withholden, or which may be reserved as aforesaid, as the case may be, as in and by the said Act, passed in the thirty-first year aforesaid, are contained and enacted with regard to such Bills respectively.

All Laws now in force to continue, except as hereby repealed or altered.

And be it further Enacted, That all laws, statutes or ordinances which are in force at the time of passing of this Act, within the said Provinces or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority and effect in each of the said Provinces respectively as if this Act had not been made, except in as far as the same are repealed or varied by this Act, or in so far as the same shall or may be hereafter by virtue of and under the authority of this Act repealed or varied by His Majesty, His Heirs or Successors, by and with the advice and consent of the said Legislative Council and Assembly.

Privileges of Members to continue.

And be it further Enacted, That all rights, privileges, immunities and advantages which are at present legally exercised and enjoyed by the members of the Assemblies of *Lower* and *Upper Canada* respectively, shall continue to be exercised and enjoyed by them as members of the said Assembly of the *Canadas*, in as full and as ample a manner as heretofore: Provided always, That no privilege of the said Legislative Council or of the said Assembly, shall extend or be construed to extend to authorize the imprisonment of any of His Majesty's subjects not being members of the said Legislative Council or of the said Assembly, or officers or servants of the said bodies respectively, until an Act be passed declaratory of the rights and privileges of the said bodies in this respect.

Henceforth all written Proceedings, and after 15 Years, all Debates to be in English alone.

And be it further Enacted, That from and after the passing of this Act, all written proceedings of what nature soever of the said Legislative Council and Assembly, or either of them, shall be in the *English* language and none other; and that at the end of the space of fifteen years from and after the passing of this Act, all debates in the said Legislative Council or in the said Assembly, shall be carried on in the *English* language and none other.

Persons professing the Religion of the Church of Rome not to be affected.

AND whereas by the said Act of the Imperial Parliament of *Great Britain*, made and passed in the fourteenth year aforesaid, intituled, "An Act for making "more effectual provision for the government of the Province of *Quebec*, in *North* "*America*," it was, amongst other things, declared, That His Majesty's subjects, professing the religion of the church of *Rome* of and in the said Province of *Quebec*, might have hold and enjoy the free exercise of the said religion, subject to the King's supremacy as in the said Act mentioned, and that the clergy of the said church might hold receive and enjoy their accustomed dues and rights with respect to such persons only as should profess the said religion; BE it therefore further Enacted and Declared, That nothing in this Act contained, nor any Act to be passed by the said joint Legislature, nor any resolution or other proceeding of the said Legislative Council or Assembly, shall in anywise affect or be construed to affect the free exercise of the religion of the Church of *Rome* by His Majesty's subjects professing the same, within either of the said Provinces, but the same may continue to be exercised, and the clergy of the said church and the several curates of each respective parish of the said Province of *Lower Canada*, now performing the clerical duties thereof, or who shall hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor or Lieutenant Governor, or persons administering the government of the said Province of *Lower Canada* for the time being, be thereto duly collated appointed or inducted, may continue to hold receive and enjoy their accustomed dues and rights in as full and ample manner, to all intents and purposes, as heretofore, and as is provided and declared by the said last-mentioned Act.

Certain provisions of 31 G. 3, to extend to Acts to be passed by the Joint Legislature.

And be it further Enacted, That all the provisions, regulations and restrictions made and imposed in and by the said Act, passed in the thirty-first year aforesaid, with respect to any Act or Acts containing any provisions of the nature therein particularly mentioned and specified, shall and the same are hereby declared to extend and apply to each and every Act which shall be passed by the said Legislative Council and Assembly, and which shall contain any provisions of the nature in and by the said last-mentioned Act set forth and specified.

Accounts, &c., to be laid before the Legislature.

And be it further Enacted, That all and every the accounts, returns, papers, and documents, which by any Act now in force in either Province, are directed to be laid before the Legislature thereof respectively, shall, under the penalties therein provided, be in like manner transmitted and laid before the Legislature of the *Canadas*, during the continuance of such Acts.

Salaries of Officers of the Legislature to continue till otherwise provided for.

And be it further Enacted, That the officers and other persons receiving salaries or allowances in respect of services rendered by them in the Legislatures of their respective Provinces, shall continue to receive such salaries and allowances as heretofore, until otherwise provided for by any Act which shall be passed by His Majesty, His Heirs or Successors, with the advice and consent of the Legislative Council and Assembly of the *Canadas*.

## LXXI

## LORD DALHOUSIE'S SPEECH PROROGUING THE LEGISLATURE OF LOWER CANADA

[Trans.: Christie, *op. cit.*]

9th March, 1824.

Gentlemen of the legislative council, gentlemen of the assembly,—I am now to close a session of the provincial parliament, the result of which I am much afraid will prove to be of little public advantage; at the same time your long and laborious attendance is entitled to my best thanks; but before I prorogue this parliament, I think it important to the country that I should here, as his Majesty's representative, express my sentiments upon the general result of your proceedings during the several sessions in which I have met you: I declare those sentiments in an earnest desire to attract the serious attention of every member of this parliament, of every man who values the prosperity of Canada, and I trust I know too well the principles of the British Constitution, to express myself in any manner inconsistent with that respect which one branch of the legislature owes to another, or with those rights and privileges which belong to each respectively.

A claim has been made to an unlimited right in one branch of the legislature, to appropriate the whole revenue of the province according to its pleasure, including not only that part of it heretofore granted to his Majesty, and which is appropriated by acts of the provincial parliament to specific purposes, and subject to such distribution as the king may see fit, but even that portion also of the revenue which is raised by the authority of the Imperial Parliament, appropriated to defray the expenses of the administration of justice and of his Majesty's civil government in this province, and directed by an act [1] passed in the British parliament, long before the establishment of the present constitution in this province, to be so applied, under the authority of the lords commissioners of his Majesty's treasury; this claim, made by one, has been formally denied by the other two branches of the provincial parliament; nevertheless it has been persisted in, and recourse has been had to the unusual proceeding of withholding the supplies, except upon conditions which would amount to an acknowledgment of its constitutional validity.

This subject has occupied every session from the first to the last, and is now transmitted to those which shall follow. It has caused incalculable mischief to the province; and now leaves it to struggle under difficulties, while every inhabitant of it must see that the encouraging aid of the legislature is alone wanting to arouse powerful exertions and draw forth those resources, which, without that aid must, in a great measure, be dormant and useless within its reach. But, gentlemen, I see with infinite satisfaction, that notwithstanding these unfavorable circumstances, Canada is powerfully advancing in improvement, and that the differences which continue to disturb the legislature, have not interrupted, in the smallest degree, that general contentment which the people enjoy under the paternal care and protection of his Majesty.

In former years, when the supplies necessary for the support of his Majesty's government and the honor of his crown in this province, were not granted, I averted the unhappy consequences which must have resulted from a strict adherence to the letter of the law; and I trust that my conduct, on these occasions, will be justified and approved, where alone I am responsible: but as my advice has been unavailing to prevent this result at the present period, I shall interfere no further; adhering now to the letter of the law, I shall guide the measures of the executive government by that rule, and according to my best judgment,

[1] See No. XXXII.

lamenting that the public must feel those consequences which have so long impended over it, and which I can no longer avert.

Gentlemen of the legislative council,—I feel myself called upon to acknowledge the calm, firm and dignified character of your deliberations and conduct in the discussion of the public business, and I take it upon me, in a sense of duty, to thank you in his Majesty's name, for the support you have uniformly given to the measures I have from time to time recommended to you for the good of the province.

I fervently pray that the wisdom of your proceedings may make a just impression upon the loyal inhabitants of the province, and lead them to that temperate and conciliating disposition which is always best calculated to give energy to public spirit, to promote public harmony, and ensure public happiness; these are the great advantages which result from a wise exercise of the powers and privileges of parliament.

## LXXII

## BATHURST TO BURTON

[Trans.: Christie, *op. cit.*]

Downing Street, 4th June, 1825.

Sir,—I have received your two despatches of the dates of the 24th and 30th March ultimo. In the first of these despatches you state that "you inform me "with infinite satisfaction that the differences which have so long subsisted "between the legislative bodies on financial matters, have been amicably settled, "and that I shall perceive by the draft of a bill which you enclose, that the "assembly have decidedly acknowledged the right of the crown to dispose of "the revenue arising out of the 14th Geo. III." etc.[1]

I regret to say that it is not in my power to consider this arrangement as in any degree satisfactory. The special instructions which had been given by his Majesty's command to the governor-general, in my despatches of the 11th Sept., 1820, and 13th September, 1821, had imposed on him the necessity of refusing all arrangements that went in any degree to compromise the integrity of the revenue known by the name of the permanent revenue; and it appears to me, on a careful examination of the measures which have been adopted, that they are at variance with those specified and positive instructions.

The executive government had sent in an estimate in which no distinction was made between the expenditure chargeable upon the permanent revenue of the crown and that which remained to be provided for out of the revenues raised under colonial acts. In other words, had the whole revenue been raised under colonial acts there would have been no difference in the manner of sending in the estimates.

The estimate was given at £65,000 sterling, of which the assembly appear to have voted £58,074, as "amount of votes," and £3,537, specially voted by Provincial acts; and they refuse to incur any expenditure for £3,390 for different items. Instead of the king's permanent revenue having certain fixed charges placed upon it, of which the assembly were made cognizant, the revenue was pledged, together with the colonial revenue, as the ways and means of providing for the expenses of the year. The assembly having calculated the amount of the permanent revenue and of the taxes received under colonial acts proceeded to vote, from the unappropriated revenues, "such sum or sums as might be necessary to make up and complete a sum not exceeding £58,074 sterling," and the extent of which must necessarily depend on the amount of the taxes received from the permanent revenue.

The consequence of this arrangement is, that the permanent revenue will not be applied for the payment of such expenses as his Majesty may deem fit, but on the contrary, for the payment of whatever expenses the colonial legislature may think necessary, and the only money to be raised under the king's revenue being thus appropriated, no means remain for the liquidation of those expenses formerly carried on the king's revenue, and many of them specially authorized by his Majesty, which have been rejected by the assembly in this instance. The appropriation of the permanent revenue of the crown will always be laid by his Majesty's command before the house of assembly, as a document

[1] See No. XXXII.

for their information and for the general regulation of their proceedings. They will therein see what services are already provided for by the crown, and what remains to be provided for by the legislature; and they will be thus assured that the proceeds of the revenue of the crown, (whether more or less, and from whatever source derived,) will exclusively and invariably be applied, under the discretion of the king's government, for the benefit of the province.

With respect to items rejected by the assembly, I shall feel it my duty, after having given attention to each individual article, to give special instructions to the governor-general on his return,[1] to direct the payment of those which it may be thought expedient to continue.

As the bill is limited to one year, I shall not think it necessary to recommend to his Majesty to disallow it, but confine myself to instructing his Majesty's representative in the province of Lower Canada, not to sanction any measure of a similar nature.

I have, etc.,

(Signed) BATHURST.

## LXXIII

## RESOLUTIONS OF ASSEMBLY OF LOWER CANADA, 1826

[Trans.: Christie, *op. cit.*]

I. That it is the opinion of this committee that it is expedient to adhere to the determination of the house, as recorded in its votes and proceedings on the civil expenditure of the government of this province, in 1810, 1819, 1821, 1822, 1823, 1824, 1825, and during the present session, to vote upon all the necessary sums for paying the said expenses, and to renew its resolutions of the 12th March, 1821, 12th Jan., 1822, 7th March, 1823, 2d March, 1824, and 13th March, 1826, in so far as they are opposed to the exclusive application of any part of the public revenue, to particular services, without the consent of this house.

II. That the Statute of the 18th Geo. III, chap. 12,[2] has not conferred any new rights upon the inhabitants of the British colonies, but it is a declaratory act, the enactments whereof recognize and consecrate the constitutional maxim, that the colonies having a representation have an unalienable right not to be taxed without the consent of their representatives, and that to the Legislature alone appertains the right of distributing all monies levied in the colonies.

III. That the said act as well as a multitude of other acts of the British parliament which announce the same principles, and the acts and constant claims of the British colonies which have enjoyed a representative system, have established a public colonial law, uniform for them all, under which they have prospered, by which their legislatures have annually distributed the revenue and exercised an effectual and necessary controul over the expenses of their administration.

IV. That there is the less reason to maintain that this province ought not to enjoy that right, as it is the only one of all the North American colonies, for which the Imperial Parliament is not every year called upon to vote a great part of the expenses of the civil government. That this house is yet willing, as they have always been, to grant all the sums towards the necessary expenses of the administration of justice, and the support of the civil government provided they have a just controul over the whole revenue.

V. That even assuming as a proposition, which, nevertheless, this house do formally reject, that the revenue applicable to the payment of the expenses of the civil government, and of the administration of justice, may legally be distributed by any other authority than that of the legislature; if they were sufficient to defray the whole of those expenses, the claim set up by the present administration to exemption from the effectual and necessary controul of the assembly, in the distribution of that portion of the public revenue, is by so much the more ungrounded, as in consideration of the acknowleged insufficiency of those funds, the house of assembly being called upon, to supply additional considerable sums, indispensably necessary for covering the whole expenses of the civil government, and of the administration of justice, they have the right of annexing to that grant, such conditions and limitations as the interest of the country appears to them to require.

[1] Lord Dalhousie was absent from the province from June, 1824, to September, 1825. Lieutenant-governor Burton was administrator in his absence.

[2] See No. XXXIX.

## LXXIV

## LORD DALHOUSIE'S SPEECH PROROGUING THE LEGISLATURE OF LOWER CANADA, 1827

[Trans.: Christie, *op. cit.*]

Gentlemen of the legislative council, gentlemen of the assembly,—I come to close this session of the provincial parliament, convinced, by the state of your proceedings, that nothing likely to promote the public interest can be now expected from your deliberations.

To you, gentlemen of the legislative council, who have attended to your duties in this session, I offer my thanks on the part of his Majesty, as an acknowledgment of the regard which, by your presence, you have shown to the welfare of your country, and also of that proper respect which you have manifested for the sovereign, from whom your honours are derived.

Gentlemen of the assembly,—It is painful to me, that I cannot speak my sentiments to you in terms of approbation and thanks. The proceedings in this session impose upon me a duty, of which, however unpleasing, I will acquit myself as a faithful servant of my king, and a sincere friend to the province.

Many years of continued discussion of forms and accounts have proved unavailing to clear up and set at rest a dispute, which moderation and reason might have speedily terminated. It is lamentable to see, that no efforts or concessions of his Majesty's government have succeeded in reconciling those differences of opinion in the legislature; but it is infinitely more so, that differences on one subject should cause a rejection of every other measure which his Majesty's government recommends to your consideration.

The duties expected of you in this session were not difficult; among the first was an examination of the public accounts of last year, and a report upon them, whether of approval or otherwise;—has that duty been done so that your country can know the result?

Have you considered the estimated expenditure for the current year, and granted the supply required in his Majesty's name? or have reasons been assigned for the refusal of them, that can be known and understood by the country?—Have the messages from his Majesty's representative been duly acknowledged, and answered according to the rules and forms of parliament, or according with the respect which is due by each branch of the legislature to the other?

Have the rules or orders of proceeding in the house of assembly been attended to, in so far as they affect and recognize the prerogative rights of the crown?

These are questions, gentlemen, which you are now to ask yourselves individually and answer to your constituents on your return to them.

These are questions which you are to answer to your consciences, as men who are bound by oaths of fidelity to your country and to your king.

In my administration of the government, I have seen seven years pass away without any conclusive adjustment of the public accounts; thus accumulating a mass for future investigation, which must lead to confusion and misunderstanding. In the same years I have seen the measures of government, directly applicable to the wants of the province thrown aside without attention and without any reason assigned. I have seen the forms of parliament utterly disregarded; and in this session a positive assumption of executive authority, instead of that of legislative, which last is alone your share in the constitution of the state.

The results of your proceedings in this session have been, the refusal of the supplies necessary for the ordinary expenses of government, the loss of the militia bill, the failure of all provision for the maintenance of prisoners in your gaols and houses of correction, for the support of the insane and foundlings, and for the establishments of education and charity, and a total obstruction of local and public improvements.

In this state of things, and with the experience of past years, it is now no longer consistent with a proper discharge of the high trust committed to me, to entertain hopes of a return to better reason in the representative branch of this parliament but it is still my duty to call upon you as public men, and to call upon the country, as deeply interested in the result, to consider seriously the consequences of perseverance in such a course.

I shall conduct the Government with the means in my power, with an un-

diminished desire to do good; but while I must submit myself to the interruption of all public improvement, under the authority of the civil government, I will declare my deep regret at such a state of things: I think it right to convey to the country, a free and unreserved expression of my sentiments upon these public misfortunes; and I will leave no doubt on the public mind of my determination to persevere firmly in the path of my duty, with a faithful regard to the rights of my sovereign with which are also combined the best interests of the province.

It only remains for me now, compelled by existing circumstances to prorogue this parliament, whatever may be the inconvenience resulting to the province by such a measure.

## LXXV

## HUSKISSON'S SPEECH ON CANADIAN AFFAIRS [1]

[Trans.: Christie, *op. cit.*]

There is, I am sure, none who will not say, that the pretensions of the legislative body to take the whole management of these monies into its own hands, are neither founded in law nor practice. On the other hand, the house of assembly holding the public purse in its own hands, having the complete command of the general revenue, in order to enforce its unreasonable pretensions—for so I must call them, inasmuch as they are contrary to law, inconsistent with, and subversive of all the principles of constitutional government—in order I say to enforce their pretensions, have refused to appropriate any part of the larger revenue, of which they have the command, unless also the appropriation of the permanent crown revenue be given up to them. This, sir, is the state of the controversy between the executive and the legislative body in Canada. The consequences of the agitation of such a question as this, in which both parties have stood upon their extreme rights have been most unfortunate, and such as all who looked dispassionately at the subject, could not but most deeply regret. One of the unfortunate consequences has been, the necessity under which the representative of the king has found himself, of appropriating money for the necessary services of the colony, without the sanction of the colonial legislature. Such a thing as this, in a country with a legislative assembly—in a country that has the least pretence to freedom, can only be justified by the absolute necessity of preventing general confusion, and the subversion of the government. I do not stand here, God forbid that I should! in the British House of Commons, living as I do, in a country where the rights of the popular branch of the legislature to controul the expenditure of the money it raises are so well known and universally acknowledged—to defend the abstract propriety of a governor of a colony appropriating its revenue without the sanction of an act of the legislature, as required by law; but, pressed by necessity, it ought not perhaps to be wondered at, however we may regret the necessity, that a governor should take all the means in his power to maintain the tranquillity of the place committed to his charge.—When principles are pressed to the extreme, a legislature may, no doubt, distress the executive government of a country, and so wear it out by continued opposition, as to have the point in dispute conceded; but what are not in the meantime the unfortunate results to the people? What, in the midst of these conflicts, has been the result to the province of Canada? Nothing was expended of the money raised in this irregular manner, as I must call it, but what was absolutely necessary to carry on the government of the province; all improvement was at a stand, the roads were neglected, education was overlooked, the public buildings were suffered to fall to decay, and the country generally—I will not say reduced to a state of anarchy, because the king's representative properly sustained his government—was brought to such a state that there was not a Canadian whose interests did not suffer. The recurrence of such a state of things it is our duty to prevent, and I think I have made out such a case as is sufficient to convince the house, without going into further details, that, if we have the right and the power, the time is come which warrants us calling upon parliament

[1] In 1828 matters reached such a crisis that the extremists under Papineau attacked Dalhousie in terms of abuse. A monster petition condemning him and setting forth grievances was sent to England. A counter-petition from the eastern townships followed. On Huskisson's motion the government appointed a committee to investigate Canadian affairs. Extracts from its report are given in the next document. For Huskisson's speech *in extenso* see, *Huskisson's Speeches*, iii, pp. 269 ff. (London, 1831). Cf. Brady, A., *William Huskisson and Liberal Reform*, pp. 163 ff. (Oxford, 1928).

to interpose its beneficent authority for the purpose of quieting these feuds, and of establishing such a system of civil government as may give a fair share to all parts of the province of the administration of the revenues, so as to render them available for the improvement of the country—such a system as will on the one hand give to the legislative assembly the power of directing the whole application of funds for the internal improvement of the province, and on the other, restraining them from the exercise of any authority over what I may call the civil list. Every man who knows anything of the country must be aware of the unfitness of the king's representative in the government, and the judicial establishment for the administration of criminal justice, which is the same as that of England, depending for their stipends upon the varying judgments of a popular assembly. The inexpediency of this with regard to the judicial establishment, which in its administration of justice, might often come into collision with the members of the assembly, whose judgment is every year to regulate the reward of their services, must be particularly obvious. Judges have duties to perform, which render it essential that they should be perfectly independent. I trust I need say no more to convince the house, that the system wished to be established by the Canadian legislature, is not compatible with the independence and dignity either of the king's representative or the criminal judges. Out of what particular fund these charges should be defrayed, I am not prepared to say, but the present plan of paying a fixed and settled sum out of a variable revenue, I certainly think might be amended. Without, however, entering into the particulars on this point, I think some mode might be found for establishing what I have styled the civil list, from which the salaries of the judicial and other departments, should be granted for life; or in any other way that would answer the object I have in view. The remainder of the revenue should then be left to the free disposal of the colonial legislature. I must here, in justice to the king's government in Canada, claim for them their due. So far was it from wishing to have any control over any further sum than that to which I have alluded, that they never hesitated, during the whole of these troubles, to lay before the legislature of the province, an account of the application of, and payments from the revenue, in order that the assembly might be assured there was no misapplication of it. The government there are perfectly willing, it is evident from this, to accede to the suggestion I have just made respecting the share of controul it shall have over the colonial revenues. Sir, I do not think there are any other topics connected with the present state of Canada, which would justify me in detaining the house longer, as I trust I have said sufficient to support me in the motion I intend to make. There are two grounds on which I principally rest. The first is the state of the representative system in Lower Canada, and the situation of the revenue in respect to the administration of justice; and the second is the controversy which has grown up respecting the powers of the executive and legislative bodies. The case I have made out on those two points is sufficient, I trust, to entitle me to the committee for which I mean to move. Before I sit down, I beg only to add a word or two respecting a point which has been insinuated in this house, and discussed in other places. I allude to what has been said respecting the policy of giving up the colony altogether. Those who think it would be politic to do so, may say that we ought to spare ourselves the trouble and endeavours to improve the state of the provinces, by taking the wiser and better course of relinquishing them altogether. Let those who argue thus, consider that these are our fellow subjects—are born like ourselves, in the king's allegiance—are fulfilling all the duties of subjects and are willing to remain as such and fulfil all the obligations their allegiance to the Crown requires. I say, that whilst that is the case, they are fairly entitled to claim from us that protection which their fidelity and good conduct have rendered them so worthy of. On such a subject I will not argue on—what is, however, a very maintainable ground, the importance of these provinces to Great Britain in a naval, a commercial and political point of view—but I implore honourable gentlemen, before they venture even to allow themselves to hint at such a conclusion as that to which I have just adverted, to consider the political honour of this country, and the moral impression which would be made on all nations by such a relinquishment without necessity, and without its ever having been asked us. Shall we give up such a possession without a challenge? Or shall we, as was done in the case of another part of America once, also belonging to France, I mean Louisiana—shall we make it a matter of pounds, shillings and pence?

Shall we sell it to another power? England has not fallen so low, Canada is bound to us by the recollections of honourable valour, both naval and military. It is a trophy too glorious to part with in either of the ways I have alluded to. Canada cannot but be maintained by every means within our power; we are bound if we wish to bear untarnished our honour, to give Canada protection to the last extremity. That, then, is not a view of the subject we can for one instant entertain. It is a country, too, let it be remembered, where there are none of those unfortunate distinctions which prevail in others of our colonies—there is no division of castes, no slavery—the people are, I may say, almost as one family united by the most intimate connections with this country. England is the parent of many colonies, one of which now forms one of the greatest and most flourishing empires in the world; by that, and others, we have carried our language, our free institutions, and our system of laws, to the most remote corners of the globe. What we have thus planted is now taking root, and what we now foster as colonies will be, no doubt, one day or other, themselves free nations, the communicators of freedom to other countries. If I am told that for this we have made great sacrifices, I say, be it so, for in spite of these sacrifices, England remains, for its extent, still the most powerful, the most happy nation that does or ever has existed. I say, moreover, that we should be well paid for all the sacrifices we may yet be called upon to make, if we are to add to the rich harvest of glory we have already reaped, by being the parent of countries in which the same happiness and prosperity that has distinguished this country will, I trust, for many ages to come be enjoyed. That will be our reward for establishing our superfluous population not only in America, but in other quarters of the world. What can be a prouder feeling for Englishmen, than that England has done its duty to the world, by attempting, and successfully, to improve it? Whether Canada is to remain for ever dependent on England, or is to become an independent state—not, I trust, by hostile separation, but by amicable arrangement—it is still the duty and interest of this country to imbue it with English feeling, and benefit it with English laws and institutions.

## LXXVI

## REPORT OF THE SELECT COMMITTEE ON THE STATE OF THE CIVIL GOVERNMENT OF CANADA [1]

[Trans.: *British Parliamentary Papers*, 1828, VII; 569.]

22nd July, 1828.

Your committee began their investigation into the state of the civil government of Canada, by examining the several petitions from the inhabitants of the two provinces, which had been referred to them by the house. The petition from the townships of the lower province,[2] signed by about 10,000 persons, complain of the want of courts within their own limits, and of the administration of French law in the French language. That they are without representation in the house of assembly in Lower Canada; and that emigrants of British origin have been deterred from settling in the province: And, finally, they pray that a legislative union may take place between Upper and Lower Canada.

Your committee then proceeded to examine the petition signed by 87,000 inhabitants of Lower Canada, resident within the seigniories, who complain of arbitrary conduct on the part of the governor of the province—of his having applied public money without legal appropriation—of violent prorogations and dissolutions of the provincial parliament, and of his having prevented the passing of many useful acts, which they enumerate.

They complain also that a receiver-general had been maintained in the exercise of his functions for some years after his insolvency was known to the government. That similar abuses had prevailed with respect to the office of sheriff. And it is further stated, that the rights of the petitioners had been injured by acts of the Imperial parliament, particularly by the Canada Trade

[1] The extracts given from the report are the most important constitutionally. The whole report is valuable, and the 308 pages of evidence are of exceptional interest. The report became later on a strong reform platform in Lower Canada. Unfortunately, the report was never debated in the British parliament, for soon after it was drawn up Huskisson ceased to be colonial secretary.

[2] The Eastern townships.

Act and the act passed in the sixth year of his Majesty's reign, chap. 59, affecting the Tenures of Land.

For a further knowledge of the grievances complained of, your committee beg leave to refer to the petitions, which will be found in the appendix.

Before your committee proceed to explain or to discuss these important subjects, they think it their duty to state, that petitions from the province of Upper Canada were also referred to their consideration; the prayer of which petitions is, that the proceeds arising from the sale of certain lands set apart for a protestant clergy may not be applied solely to the use of the clergy of the church of England, (the adherents to which throughout the province they state, in contradiction to representations of Archdeacon Strachan, to be comparatively few in number) but that they may be applied to the maintenance of protestant clergymen of other denominations, and to the purposes of general education.

As these petitions appear to comprehend the most material subjects that have of late agitated the provinces of Upper and Lower Canada, your committee thought the best course they could pursue, was to examine witnesses as to each petition, in succession, and in communicating to the house, the information they have received, and the opinions they have been induced to form as to the civil government of Canada, they will treat of the different subjects as much as possible in the order in which they were investigated.

Your committee proceeded to examine into the peculiar system of law established in Lower Canada, to which their attention was peculiarly drawn by the petition from the Townships. Your committee have examined in great detail on this subject, from which they collect that uncertainty has long existed on points of law relating to the tenure of real property in that portion of the province. It appears that shortly after the cession of the province, the king of England, in a proclamation dated the 7th October, 1763 [1] (which will be found in the appendix) declared, amongst other things, "That all the inhabitants of the province, and all others resorting to it, might confide in his royal protection for enjoying the benefit of the laws of England," and announced that he had given commands for the erection of courts of judicature, with an appeal to his Majesty in council.

In the year 1774,[2] the first act of parliament was passed making provision for the better government of this part of the British dominions. By this act the English criminal law was preserved. But it was enacted that, "in all matters of controversy relating to property and civil rights, resort should be had to the laws of Canada, as the rule for decision of the same, and all causes that should therefore be instituted in every court of justice, to be appointed within the province, should, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada." There is, however, one marked exception to this concession of the French law, namely, "that it should not apply to lands which had been, or should be granted in Free and Common Soccage."

After an interval of several years, this act was followed by the Constitutional Act of 1791.[3] The provisions of this important act have no bearing upon the subject under our consideration, excepting that it provides with respect to Lower Canada, that lands shall be granted in free and common soccage if so desired, and further, that such grants are to be subject to such alteration, as to the nature and consequences of Soccage Tenure, as may be made by the provincial legislature, and with his Majesty's approbation and assent; but no such alteration has been made.

On examining into the application of those provisions in the province, it appears not only that doubts have existed as to the true interpretation of them —but that the general practice of the colony has been to convey real property within the townships according to the Canadian forms, and that it has descended and been subject to the incidents of that law. In the year 1826, the British parliament passed an act which put its own interpretation of these statutes beyond the reach of further dispute. This act commonly called the Canada Tenures' Act,[4] declared that the law of England was the rule by which real property within the townships was to be hereafter regulated and administered. In offering any recommendations on points of so much difficulty and importance, your committee are fully aware of the disadvantages under which they labour, and of their inability, from the want of sufficient technical and local information to enter, for any useful purpose, into minute and intricate details. They do not,

[1] See No. VII. [2] See No. XXXI. [3] See No. LIV [4] 6 George IV, c. 59.

however, decline to offer as their opinion, that it would be advantageous that the declaratory enactment in the Tenures' act respecting lands held in free and common soccage should be retained: that mortgages should be special, and that in proceedings for the conveyance of land, the simplest and least expensive forms of conveyance should be adopted upon the principles of the law of England; that form which prevails in Upper Canada, being probably under all circumstances, the best which could be selected: that a registration of deeds relating to soccage lands should be established as in Upper Canada.

Your committee are further of opinion that means should be found, of bringing into effective operation the clause in the Tenures' act, which provides for the mutation of tenure; and they entertain no doubt of the inexpediency of retaining the seigniorial rights of the crown, in the hope of deriving a profit from them. The sacrifice on the part of the crown would be trifling, and would bear no proportion to the benefit that would result to the colony from such a concession.

In addition to these recommendations it appears to be desirable that some competent jurisdiction should be established to try and decide causes arising out of this description of property; and that circuit courts should be instituted within the townships for the same purposes.

The committee cannot too strongly express their opinion that, the Canadians of French extraction should, in no degree, be disturbed in the peaceful enjoyment of their religion, laws, and privileges, as secured to them by the British acts of parliament; and so far from requiring them to hold lands on the British tenure, they think that when the lands in the seigniories are fully occupied, if the descendents of the original settlers shall still retain their preference to the tenure of *fief et seigneurie*, they see no objection to other portions of unoccupied lands in that province being granted to them on that tenure, provided that such lands are set apart from and not intermixed with the townships.

Your committee are now desirous of adverting to the representative system of Lower Canada, with respect to which all parties seem to agree that some change should take place. To this branch of their enquiry, they are desirous of recalling to the recollection of the house that under the provisions of the act of 1791, the division of the province for the purpose of exercising the elective franchise, was entrusted to the governor; and it appears that Sir Alured Clarke took the numerical amount of the population as the sole basis on which his calculations were formed, and divided into counties as much land as was found to contain a given number of inhabitants. On the thickly populated banks of the St. Lawrence, a small district was found to suffice, while in the most distant parts, vast territories were comprehended in one county, in order to obtain the requisite amount of population. Thus it happens that the counties of Kent, Surrey, Montreal, Leinster, and Warwick, do not, altogether, equal, in extent, the single county of Buckinghamshire. The small counties, too, are composed wholly of lands holden as seigniories.

A bill actually passed the assembly, the object of which was to increase the number of the representative assembly. This bill did not become a law, and it appears to have been founded upon the same principle, and to have involved the same error as the original arrangement by Sir Alured Clarke. It has been stated by one of the witnesses, that under the proposed division, a disproportionable increase would have been given to the representatives from the seigniories.

In providing a representative system for the inhabitants of a country which is gradually comprehending in its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding, in the first instance, on the basis of population only. In Upper Canada, a representative system has been founded on the compound basis of territory and population. This principle, we think, might be advantageously adopted in Lower Canada.

One of the obstacles which is said greatly to impede the improvement of the country is, the practice which has prevailed in making grants of land in large masses to individuals who had held official situations in the colony, and who have evaded the conditions in the grant, by which they were bound to provide for its cultivation, and now wholly neglect it, although powers have been latterly acquired by the government to escheat these lands; and although we think that under certain modifications this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that in Upper Canada, by the levy of a small annual duty on lands unimproved and unoccupied, contrary to the conditions of the grant.

It now becomes the duty of your committee to advert to the petitions signed by the inhabitants of the seigniories, on the important subjects contained in them. They thought it right to call for explanation from Mr. Neilson, Mr. Viger, and Mr. Cuvillier, members of the assembly of Lower Canada, who had been deputed to this country for the purpose of seeking redress for the injuries complained of by the petitioners.

From the testimony of these gentlemen we have learned, with the deepest regret, that the disputes which have arisen between the government and the house of assembly, originating (as they appear to have done) in doubts as to the right of appropriating and accounting for a considerable portion of the public revenues, have led to a state of confusion and difficulty in the administration of public affairs in the colony, which calls for a decisive and early remedy.

With a view to understand accurately the grounds of this dispute, the committee have carefully examined into the different sources of revenue arising in Lower Canada, and they have examined also the public documents which have enabled them to trace the successive steps which had been taken by the contending parties in these disputes. Your committee beg leave to refer to the evidence of Mr. Neilson and of Mr. Wilmot Horton, for a detailed account of the origin and progress of these differences.

Upon this important subject your committee have felt that they should not do wisely in confining their views to a critical examination of the precise meaning of the words of the different statutes—they look rather to the circumstances of Lower Canada—to the spirit of its constitution—to the position and character of the local government, and the powers, privileges and duties of the two branches of the legislature.

Although from the opinion given by the law officers of the crown, your committee must conclude that the legal right of appropriating the revenues arising from the act of 1774 is vested in the crown, they are prepared to say that the real interests of the province would be best promoted by placing the receipt and expenditure of the whole public revenue under the superintendance and controul of the house of assembly.

On the other hand, your committee, while recommending such a concession on the part of the crown, are strongly impressed with the advantages of rendering the governor, the members of the executive council, and the judges independent of the annual votes of the house of assembly, for their respective salaries.

Your committee are fully aware of the objections in principle, which may be fairly raised against the practice of voting the permanent salaries to judges who are removable at the pleasure of the crown; but being convinced that it would be inexpedient that the crown should be deprived of that power of removal, and having well considered the public inconvenience which might result from their being left in dependence upon an annual vote of the assembly, they have decided to make the recommendation, in their instance, of a permanent vote of salary.

Although your committee are aware that the grant of permanent salaries has been recommended to a much greater number of persons connected with the executive government than they have included in their recommendation, they have no hesitation in expressing their opinion, that it is unnecessary to include so large a number, and if the officers above enumerated are placed on the footing recommended, they are of opinion that all the revenues of the province (except territorial and hereditary revenues) should be placed under the controul and direction of the legislative assembly.

Your committee cannot close their observations on this branch of their enquiry, without calling the attention of the house to the important circumstance, that in the progress of these disputes, the local government has thought it necessary through a long series of years, to have recourse to a measure (which nothing but the most extreme necessity could justify) of annually appropriating by it own authority, large sums of money of the province, amounting to no less a sum than £140,000 without the consent of the representatives of the people, under whose controul the appropriation of these monies is placed by the constitution.

Your committee cannot but express their deep regret that such a state of things should have been allowed to exist for so many years in a British colony, without any communication or reference having been made to parliament on the subject.

Upon the several points referred to your committee connected with the office of receiver-general, of the sheriffs, and of the Jesuits' estates, your committee proceeded to examine evidence on each. The facts of the case as regards the receiver-general, Mr. Caldwell, are detailed in Mr. Neilson's evidence. Mr. Caldwell was a defaulter in 1823 for £96,000 of the public money of the province. Upon an examination of the accounts by the house of assembly, no acquittal could be traced from the treasury of a later date than 1814, though some balances were stated up to 1819, and it appeared by documents then produced, that the fact of his deficiency was known for a considerable time before he was suspended.

Your committee recommend for the future that steps should be taken by efficient securities and by a regular audit of the accounts, to prevent the recurrence of similar losses and inconveniences to the province.

As connected with this branch of the enquiry, your committee recommend that precautions of the same nature should be adopted with regard to the sheriffs, as it appears that within a few years two instances of the insolvency of these officers have occurred, while possessed, in virtue of their office, of large sums of money deposited in their hands.

With respect to the estates which formerly belonged to the Jesuits your committee lament that they have not more full information, but it appears to them to be desirable that the proceeds should be applied to the purposes of general education.

One of the most important subjects to which their enquiries have been directed has been the state of the legislative councils, in both the Canadas, and the manner in which these assemblies have answered the purposes for which they were instituted. Your committee strongly recommend that a more independent character should be given to those bodies, that the majority of their members should not consist of persons holding office at the pleasure of the crown, and they are of opinion that any other measures that may tend to connect more intimately this branch of the constitution with the interest of the colonies would be attended with the greatest advantage. With respect to the judges, with the exception only of the chief justice, whose presence, on particular occasions, might be necessary, your committee entertain no doubt that they had better not be involved in the political business of the house. Upon similar points, it appears to your committee that it is not desirable that judges should hold seats in the executive council.

Your committee are desirous of recording the principle, which, in their judgment, should be applied to any alterations in the constitution of the Canadas, which was imparted to them under the formal act of the British legislature of 1791. The principle is to limit the alterations which it may be desirable to make by any future British act, as far as possible, to such points as from the relation of the mother country with the Canadas, can only be disposed of by the paramount authority of the British legislature; and they are of opinion that all other changes should, if possible, be carried into effect by the local legislatures themselves, in amicable communication with the local government.

Upon the great question of the union of the two Canadas, your committee have received much evidence, to which they desire to call the attention of the house. With reference to the state of public feeling that appears to prevail in these colonies on this momentous subject, your committee are not prepared, under present circumstances, to recommend that measure.

Your committee, nevertheless, think it highly desirable that some satisfactory arrangement, (and, if possible, one of a permanent nature,) should be effected between the two Canadas, with regard to the imposition and distribution of the customs collected in the St. Lawrence. They trust, however, when the heats which so unfortunately exist shall have subsided, that such an arrangement may be amicably effected.

* * * * * *

Your committee beg leave to call the particular attention of the government to the mode in which juries are composed in the Canadas, with a view to remedy any defects that may be found to exist in the present system.

Your committee lament that the late period of the session in which they were appointed has rendered a minute investigation into all parts of the subject submitted to them impossible. They believe, too, that if the legislative assemblies and the executive government of Canada can be put on a right footing, that means will be found within the province of remedying all minor grievances. They

are disposed, nevertheless, that the prayer of the lower Canadians for permission to appoint an agent, in the same manner as agents are appointed by other colonies which possess local legislatures, should be granted; and that a similar privilege should be extended to Upper Canada, if that colony should desire it.

At an early period of their investigation, your committee perceived that their attention must be directed to two distinct branches of enquiry:—1st,—To what degree the embarrassments and discontents which have long prevailed in the Canadas had arisen from defects in the system of laws and the constitutions established in these colonies. 2nd,—How far these evils are to be attributed to the manner in which the existing system has been administered.

Your committee have clearly expressed their opinion that serious defects were to be found in that system, and have ventured to suggest several alterations that have appeared to them to be necessary and convenient. They also fully admit that from these as well as from other circumstances the task of government in these colonies (and especially in the Lower Province) has not been an easy one; but they feel it their duty to express their opinion that it is to the second of the causes alluded to, that these embarrassments and discontents are in a great measure to be traced. They are most anxious to record their complete conviction that neither the suggestions they have presumed to make, nor any other improvements in the laws and constitutions of the Canadas will be attended with the desired effect, unless an impartial, conciliatory and constitutional system of government be observed in these loyal and important colonies.

## LXXVII

## NEILSON'S RESOLUTIONS, HOUSE OF ASSEMBLY, LOWER CANADA [1]

[Trans.: Christie, *op. cit.*]

6th December, 1828.

1. Resolved,—That it is the opinion of this committee, that this house has derived the greatest satisfaction from the gracious expression of his Majesty's beneficent views towards this province, and from the earnest desire of his excellency the administrator of the Government, to promote the peace, welfare and good government of the province, as evinced in his excellency's message of Friday last.

2. Resolved,—That it is the opinion of this committee, that this house has, nevertheless, observed with great concern, that it may be inferred from the expression of that part of the said message which relates to the appropriation of the revenue, that the pretension put forth at the commencement of the late administration, to the disposal of a large portion of the revenue of this province, may be persisted in.

3. Resolved,—That it is the opinion of this committee, that under no circumstances, and upon no consideration whatsoever, ought the house to abandon or in any way compromise, its inherent and constitutional right, as a branch of the provincial parliament, representing his Majesty's subjects in this colony, to superintend and controul the receipt and expenditure of the whole public revenue arising within this province.

4. Resolved,—That it is the opinion of this committee, that any legislative enactment in this matter by the parliament of the United Kingdom, in which his Majesty's subjects in this province are not and cannot be represented, unless it were for the repeal of such British statutes or any part of British statutes, as may be held by his Majesty's government to militate against the constitutional right of the subject in this colony, could in no way tend to a settlement of the affairs of the province.

5. Resolved,—That it is the opinion of this committee, that no interference of the British legislature with the established constitution and laws of this province, excepting on such points as from the relation between the mother country and the Canadas can only be disposed of by the paramount authority of the British parliament, can in any way tend to the final adjustment of any difficulties

[1] These resolutions were the assembly's reply to a conciliatory speech from sir James Kempt based on the report of the committee of 1828. (See Christie, III, pp. 224 ff.)

or misunderstandings which may exist in this province, but rather to aggravate and perpetuate them.

6. Resolved,—That it is the opinion if this committee, that in order to meet the difficulties of the ensuing year, and to second the gracious intentions of his Majesty for the permanent settlement of the financial concerns of the province, with due regard to the interests and efficiency of his government, this house will most respectfully consider any estimate for the necessary expenses of the civil government for the ensuing year, which may be laid before it, confidently trusting that in any such estimate a due regard will be had to that economy which the present circumstances of the country and its wants require.

7. Resolved,—That it is the opinion of this committee, that on the permanent settlement before mentioned being effected with the consent of this house, it will be expedient to render the governor, lieutenant-governor, or person administering the government for the time being, and the judges and executive councillors independent of the annual vote of the house, to the extent of their present salaries.

8. Resolved,—That it is the opinion of this committee, that although this house feels most grateful for the increased security against the illegal application of the public money, which must result from his Majesty's government referring all persons who may have been concerned in such application, to an act of indemnity to be consented to by this house, it will be inexpedient to consent to any such enactment till the full extent and character of such illegal applications may have been fully enquired into and considered.

9. Resolved,—That it is the opinion of this committee, that this house feels the most sincere gratitude for his Majesty's solicitude to effect the most perfect security against the recurrence of abuses on the part of persons entrusted with the public monies in this province.

10. Resolved,—That it is the opinion of this committee, that this house has not complained, nor have any complaints been made known to it, respecting the arbitration for the distribution between the provinces of Upper and Lower Canada, of the duties collected in Lower Canada; but that in this, as in every other respect, this house will most cheerfully co-operate in every equitable and constitutional measure which may be submitted to it, as desirable by the inhabitants of Upper Canada.

11. Resolved,—That it is the opinion of this committee, that this house has seen with sentiments of the highest satisfaction and gratitude, the declaration of the willingness of his Majesty's government cheerfully to accede to the desires which the assembly has so frequently expressed during the last twenty years, of having an agent in England, to indicate the wishes of the inhabitants of Lower Canada; and that it is expedient to provide for such an appointment without delay.

12. Resolved,—That it is the opinion of this committee, that so soon as the scheme in contemplation of his Majesty's government for the permanent settlement of the financial concerns of the province shall have been made known and considered, it may be expedient to provide some adequate indemnity to such persons as were placed on the civil establishment of this province, with salaries prior to the year one thousand eight hundred and eighteen, and whose offices may have been found to be unnecessary or require to be abolished.

13. Resolved,—That it is the opinion of this committee, that this house will cheerfully concur in any measure which may appear most likely to be successful in effectually removing the great inconvenience which has been sustained from the non-performance of the duties of settlement by grantees or holders of land obtained from the crown, and otherwise remove the obstructions to the settlement of the country, which may have resulted or may hereafter result from the manner in which the powers and superintendence of the crown in this most essential particular as affecting the general prosperity of the province, may have been exercised.

14. Resolved,—That it is the opinion of this committee, that it is the desire of this house to take as speedily as possible every means in its power, that the inhabitants of the townships, upon a subdivision of the counties in which they are situated by act of the provincial parliament, shall have a full and equitable representation in this house, of persons of their own free choice, and that the house will cheerfully concur in every measure particularly interesting to the townships, which may appear to be the most desirable to their inhabitants, and the most conducive to the general welfare.

15. Resolved,—That it is the opinion of this committee, that this house is fully sensible of the distinguished mark of confidence reposed in the loyalty and attachment hitherto evinced by his Majesty's Canadian subjects and their representatives in the provincial parliament, by his Majesty's declaration that he relies on them, for an amicable adjustment of the various questions which have been so long in dispute.

16. Resolved,—That it is the opinion of this committee, that amongst those questions not particularly mentioned on the present occasion, this house holds as most desirable to be adjusted and most essential to the future peace, welfare and good government of the province, viz.:

The independence of the judges and their removal from the political business of the province.

The responsibility and accountability of public officers.

A greater independence of support from the public revenues, and more intimate connection with the interest of the colony, in the composition of the legislative council.

The application of the late property of the Jesuits to the purposes of general education.

The removal of all obstructions to the settlement of the country, particularly the crown and clergy reserves remaining unoccupied in the neighbourhood of roads and settlements, and exempt from the common burthens.

And a diligent enquiry into and a ready redress of all grievances and abuses which may be found to exist or which may have been petitioned against by the subjects in this province, thereby assuring to all the individual benefit of an impartial, conciliatory and constitutional government, and restoring a well-founded and reciprocal confidence between the governors and the governed.

(*Journal of the Assembly, 6th December* 1828.)

## LXXVIII

## THE CONSTITUTIONAL ACT AMENDMENT ACT, 1830

(11 George IV and 1 William IV, c. 53.)

*An Act to amend so much of an Act* [1] *of the thirty-first year of his late Majesty, for making more effectual provision for the Government of the Province of Quebec.*

16th July, 1830.

Whereas by an Act passed in the thirty-first year of the reign of his late Majesty, King George the Third, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of Quebec in North America,' and to make further provision for the Government of the said Province," it is amongst other things enacted that no person shall be summoned to the Legislative Council in either of the Provinces of Upper Canada and Lower Canada who shall not be of the full age of twenty-one years, and a natural-born subject of his Majesty, or a subject of his Majesty naturalized by Act of the British Parliament, or a subject of his Majesty having become such by the conquest and cession of the Province of Canada; and it is thereby further provided that no person shall be capable of voting at any election of a member to serve in the Legislative Assembly in either of the said Provinces of Upper Canada or Lower Canada, or of being elected at any such election, who shall not be of the full age of twenty-one years, and a natural-born subject of his Majesty, or a subject of his Majesty's naturalized by an Act of the British Parliament, or a subject of his Majesty, having become such by the conquest and cession of the Province of Canada: And whereas it is expedient that persons naturalized by any Act of the Legislative Council and Assembly of the Province of Lower Canada assembled by his Majesty, his heirs, or successors should be enabled to be summoned to the Legislative Council of the said Province of Lower Canada, and of voting at the elections of members to serve in the Legislative Assembly of the said Province, or of being elected at any such election; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and con- 31 Geo. III, cap. 31.

[1] See No. LIV.

sent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all persons naturalized by any Act of the Legislative Council and Assembly of the Province of Lower Canada, assented to by his Majesty, his heirs or successors, shall henceforth be and be deemed competent in the law to be summoned to the Legislative Council of the said Province of Lower Canada, and to vote at the elections of members to serve in the Legislative Assembly of the said Province, and to be elected at any such election.

Persons naturalized may sit in Assembly of Lower Canada and in Legislative Council.

II. Provided nevertheless, and be it further enacted, that whenever any bill which has been passed by the Legislative Council and by the House of Assembly in the said Province of Lower Canada, for the naturalization of any persons or person, shall be presented for his Majesty's assent to the Governor or Lieutenant-Governor of the said Province, or to the person administering his Majesty's Government therein, such Governor or Lieutenant-Governor, or person administering the Government, shall and he is hereby required to reserve every such bill for the signification of his Majesty's pleasure thereon; and no such bill shall have any force or authority within the said Province of Lower Canada until the Governor or Lieutenant-Governor, or person administering the Government, shall signify, either by speech or message to the Legislative Council and Assembly of the said Province, or by proclamation, that such bill has been laid before his Majesty in Council, and that his Majesty has been pleased to assent to the same; and no such bill shall have any force or authority within the said Province unless his Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for his Majesty's assent to the Governor, Lieutenant-Governor, or person administering the Government.

Act of Naturalization not to have force or authority unless His Majesty's assent be signified to the same.

## LXXIX

## CANADIAN REVENUE CONTROL ACT, 1831 [1]

(1 & 2 William IV, c. 23.)

*An Act to amend an Act [2] of the fourteenth year of His Majesty King George the Third, for establishing a fund towards defraying the charges of the administration of justice and support of the civil government within the Province of Quebec in America.*

22nd September, 1831.

14 G. 3, c. 88. Whereas by an Act passed in the fourteenth year of the reign of his late Majesty, King George, the Third, intituled "An Act to establish a Fund towards further defraying the charges of the administration of justice and support of the Civil Government within the Province of Quebec in America," it was amongst other things enacted that from and after the fifth day of April, one thousand, seven hundred and seventy-five, there should be raised, levied, collected and paid unto his said late Majesty, his heirs and successors, for and upon the respective goods thereinafter mentioned, which should be imported and brought into any port of the said Province, over and above all other duties then payable in the said Province by any Act or Acts of Parliament, the several rates and duties therein mentioned; (that is to say,) for every gallon of brandy or other spirits of the manufacture of Great Britain, three-pence; for every gallon of rum or other spirits, which should be imported or brought from any of his Majesty's sugar colonies in the West Indies, six-pence; for every gallon of rum or other spirits which should be imported or brought from any other of his Majesty's colonies or dominions in America, nine-pence; for every gallon of foreign brandy, or other spirits of foreign manufacture, imported or brought from Great Britain, one shilling; for every gallon of rum or spirits of the produce or manufactures of any of the Colonies or Plantations in America not in the possession or under the Dominion of his Majesty imported from any other place except Great Britain, one shilling; for every gallon of molasses and syrups which should be imported or brought in the said Province in ships or vessels belonging to his Majesty's subjects in Great Britain or Ireland, or to his Majesty's subjects in the said Province, three-pence; for every gallon of molasses and syrups which should be

[1] This act was violently opposed by the duke of Wellington. (See *Lord's Journals*, September 6, 1831.)

[2] See No. XXXII.

imported or brought into the said Province in any other ships or vessels in which the same might be legally imported, six-pence; and after those rates for any greater or less quantity of such goods respectively; and it was thereby further enacted that all the monies that should arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same) should be paid by the Collector of his Majesty's customs into the hands of his Majesty's Receiver-General in the said Province for the time being, and should be applied in the first place in making a more certain and adequate provision towards defraying the expenses of the administration of justice and of the support of the Civil Government in the said Province; and that the Lord High Treasurer, or the Commissioners of his Majesty's Treasury, or any three or more of them for the time being should be and they were thereby empowered from time to time by any warrant or warrants under his or their hand or hands, to cause such money to be applied out of the said produce of the said duties towards defraying said expenses; and it was thereby enacted that the residue of the said duties should remain and be reserved in the hands of the said Receiver-General for the future dispositions of Parliament: And whereas the said Province of Quebec hath since the enactment of the said Act been divided into the two Provinces of Upper Canada and Lower Canada: And whereas it is expedient to make further provision for the appropriation of the duties raised, levied and collected under the said Act; be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for the Legislative Councils and Assemblies of the said Provinces of Upper Canada and Lower Canada respectively, by any Acts to be by them from time to time passed and assented to by his Majesty, his heirs, and successors, or on his or their behalf, to appropriate in such manner, and to such purposes as to them respectively shall seem meet, all the monies that shall hereafter arise by, or be produced from the said duties, except so much of such monies as shall be necessarily defrayed for the charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same.[1]

Legislative Councils and Assemblies of Upper and Lower Canada may appropriate certain revenues thereof as shall seem meet to them.

## LXXX

## PETITION OF HOUSE OF ASSEMBLY OF LOWER CANADA, 1833[2]

[Trans.: Christie, *op. cit.*]

To the king's most excellent Majesty.

May it please your Majesty,—We, your Majesty's faithful and loyal subjects, the commons of Lower Canada, assembled in provincial parliament, deeply impressed with the necessity of the concordance and harmony that ought to prevail between the several branches of the legislature of this province, for promoting the happiness, the welfare and the good government of its inhabitants, have taken into mature consideration the circumstances connected with the constitution and composition of the legislative council of this province, as established by the act of the parliament of Great Britain, in the 31st year the reign of your late royal father, our august sovereign of blessed memory, have considered it as our duty towards your Majesty as the supreme head of the British Empire, and paternal chief of the people who compose it; towards ourselves as representing one of the most loyal of those people, and towards the general interests of the empire, most respectfully to represent:

That the legislative council of this province, has not, at any period of its existence, given proofs of that spirit of independence and community of interests, with the inhabitants of the country, which could alone ensure that harmony in the proceedings of the government, and give, in particular to each of its branches, that degree of confidence of public opinion which is requisite to produce that effect.

That it could not be otherwise, when it is considered that the original constitution of that body, and its renovation in proportion as vacancies occurred has been at the disposal of the crown, at the recommendation of the provincial

[1] See Lucas, *Lord Durham's Report*, vol. i, p. 182; vol. ii, p. 141.

[2] For an official reply to this petition, see No. LXXXII.

administrations, most frequently interested in surrounding themselves in that second branch, by public functionaries, or by other individuals known to be advocates of the measures of the executive, and who became thus clothed with a legislative inviolability. No bounds were given to those appointments, and they were thus made, in great majority, from among those who were the least connected with the country, either in point of permanent interest, of services rendered to their fellow citizens, or of the esteem in which they were held. Hence the whole body became isolated from the people, none of the great interests of whom it represents.

That the existence of this evil which has for a long time formed the subject of the remonstrances of the inhabitants of this country, has induced us to search for a remedy, so that the provincial government might be reconstituted upon bases which may at the same time coincide with those imitations of the metropolitan government, which it was evidently the intention of its legislators to introduce in the Canadas, and at the same time present that practical analogy the results of which were, no doubt, not less their desire to introduce, and without which apparent imitation in forms alone, would only produce a still greater anomaly.

Although we have no hesitation in stating our opinions as to the means of remedying this constitutional defect in our government, as forming the bases of our humble representations to your Majesty, and although we do not consider that all the interests of the country are fully and equally represented in the third branch of the legislature, yet those to whom a defective system of government have given an unconstitutional preponderance, might make a handle of it to cause the expression of our opinion not to be looked upon as that of the population in general; and, by the operation of the same system, the representations of interested public functionaries, and of privileged persons in the colony might reach your Majesty's government, carrying the same weight as those of the representatives freely elected by the whole people. This danger added to the wide local distance might cause measures adopted in the United Kingdom with the best intentions, but without practical and local knowledge, to be discordant with the true interests of the province and even to hurt those interests in essential points.

We therefore presume humbly to represent that, in case your Majesty should be convinced of the difficulties that have been exposed, there would be the certain means of preventing them, by placing the people of the country in general, in a situation to express their opinion, and to recommend proper modifications through delegates freely and indiscriminately chosen for that purpose by all classes, and out of all classes of the community, so as to be in harmony with the interests of the province, and with those of his Majesty's government, which cannot be separated from each other. Such a body,[1] constituted in virtue of an act of parliament of the United Kingdom, to whom they would have afterwards to make a report of their labours, would, whilst it could be no disparagement to the supreme authority of the empire, be in unison with the numerous examples in the free institutions of this continent, with respect to which it has often been declared that England desired to leave nothing to be wished for by the inhabitants of these colonies.

A general assembly of this kind, would prove to be a faithful interpreter of all the interests of the colony taken collectively, including those which it was the intention to be caused to be represented by the legislative council, and those which that body claim to represent. Those interests would in effect possess therein, all their weight and all their legitimate influence; unless, indeed, whilst the executive branch of the colonial government represents the interests of the metropolitan state, there ought to be also another constituted branch out of the country, and compounded of elements without any affinity with the varied interests and feelings of those who inhabit it.

In case your Majesty should not consider it proper at this time to adopt such a measure, we will not take upon ourselves, in stating the result of our deliberations, to determine whether the entire abolition of the present legislative council of this province, and the assimilation of its government to that of several of the adjacent colonies, would tend to cause peace and harmony to be re-established in the conduct of affairs. The people of the country, if they had an opportunity

[1] The suggestion of a 'convention' was embodied in a resolution by the house of assembly in January, 1833.

of being legally constituted for that purpose, would be the best judges to decide this weighty question. We therefore proceed upon the supposition that an intermediate legislative branch may, in certain cases, produce more maturity in the deliberation and examination of bills, than if only one body were called upon to assent to them; at the same time, circumstances of rare occurrence might happen in which the popular representations might, for the moment, contravene the interests of the body of their constituents, and that those interests might be cherished in the second branch, and guarded, until the wishes of the people were more fully expressed, either by more decided representations or by the means of new elections.

The second branch as actually in existence, in no way connected, in the majority of its members, with the superior and permanent interests of the country, is not adapted to fulfil that end; and even putting the case, of which as yet there has been no example, that a provincial administration were to send to it a majority of men of opposite principles, the following administration, or perhaps the same, might very soon hasten to recompose the body in such a way as to ensure its approbation of their measures.

The habits, the climate, the newness of the country, the changeability of fortunes, the division of estates, and the laws which facilitate it, are obstacles to the existence of a permanent aristocracy, so that an hereditary legislative body with the powers of the house of lords, would be simply an impossibility in Canada. Landed property being here almost wholly owned in small lots by the mass of the people, it would be impossible to make a choice so as to form a permanent legislative council, even supposing it to be a numerous one, of men who in their own persons would present an essential portion of the existing means and capitals of the country; much more, they could not counterbalance in importance and in wealth any one single county in the province: and even supposing that such a body could be collected, the above mentioned circumstances would very soon bring it into decay. In fact, several persons heretofore called to the legislative council, and whom we may reckon then possessed a large and permanent interest in the country, have since found themselves entirely destitute of fortune.

As to the idea of perforce creating an aristocracy through the medium of law, either by endeavouring to establish upon a system of *substitutions* (entails) or otherwise, a state of things, which the moral and physical circumstances in which the country is placed, forbid; or by making provision out of the public funds for legislators for life and without responsibility, it is one that is so contradictory to the known ideas of the constitution of England, as a practical model to go by, that your faithful and loyal subjects who now most respectfully address your Majesty, do not think it necessary to dwell upon it.

A pecuniary qualification required in the persons called to the council, if the choice of them be left to the executive, would not probably produce any perceptible change in the composition of the body, with relation to the nature of the various other portions of our colonial institutions. The appointments must in that case necessarily be made upon the recommendations of governors, who, being only transitorily in the country, and not having it in their power to become properly acquainted with the inhabitants of the country, until after a long residence, most frequently have recourse to irresponsible advisers in the colony. The persons who are qualified, being much fewer in number than those who would have to be chosen, the result would be that the worst would be chosen of those, and that the supposed qualification would only serve to legitimate the abuse, and to render its disappearance more difficult. Then, although each of those who were called to the legislative council might be capable of having a seat there, the majority would collectively have been chosen in an exclusive sense, and from amongst such as had the fewest relations of interest and feelings of the people. We should see as we have in times past, this body, far from being attached to the country, and making part of it, representing only favoritism, monopolies, and privileges, and through its unconstitutional influence upon the march of public affairs, perpetuating that tendency of the men in power in the province, to oppose themselves to every measure demanded by the people, and creating and maintaining a separate interest and feelings of distrust and even hostility in the minority, instead of labouring in conjunction with the house of assembly, to unite all the inhabitants of the country by means of an uniformity of views and institutions, possessing the same confidence in your Majesty's

government. The abuse here pointed out is, as we humbly conceive, sufficiently exemplified in the present composition of the legislative council, the appointments made during the last few years have only in a small number, a relation with the mass of the people generally, whilst the majority has been such as we have supposed it would continue to be along with a pecuniary qualification.

There only remains, may it please your most gracious Majesty, the principle of election [1] to rest upon, as being capable in practice of presenting an analogy with the second branch of the legislature of the United Kingdom.

We entertain no doubt of the result of the adoption of this principle, if the election depended upon a numerous body of electors composed of the best ingredients and the best interests of the colony; and if the choice were confined to persons possessed of a certain easy degree of fortune, without, however, raising that qualification so high that such choice could only be made, in any case, but out of a small number of elegible persons. The best effects might be expected from a legislative body constituted upon those bases, if, whilst its principle of action was founded in the interests of your Majesty's subjects in this province, as a general and common motive, it found itself in its formation and its proceedings independent of the popular assembly. It would undoubtedly be thus with the above qualifications, and with a different mode of renewal, so as to give more permanence to the body that is now in question.

It is upon these several considerations that we most respectfully submit the following details:—

That an elective legislative council be established, chosen by landholders having a net annual income of ten pounds in the country, and twenty pounds in cities, and who have been residents for at least one year within the circle wherein the election takes place.

The eligibility to be restricted to the subjects of your Majesty, having attained the age of at least thirty years, residents of the province, and having resided therein at least fifteen years, and possessing an annual freehold income arising from property situated within the province, of at least one hundred pounds for those elected for the county, and of at least two hundred pounds for those of the cities at Quebec and Montreal.

The duration of the body to be limited to six years; the renewal to be made by one-sixth part every year, it being to be determined during the first five years by lot which of the members chosen at the general election shall have to retire. When there shall happen to be any vacancies, those who succeed to them to be members only for the period which would have remained to their predecessors.

The number of members to be equal to that of the counties, cities, and divisions thereof, or other circles sending members to the house of assembly, with the exception of boroughs whose population does not amount to two thousand souls, who would only have to vote in the counties of which they make part. So that the number of councillors would be nearly half of that of members of the assembly.

The speaker or chairman of the body to be chosen by the members, subject to the approbation of your Majesty.

The judges to be ineligible, as well as the clergy.

The members of the present legislative council not to belong to the new council, except they are elected; yet, nevertheless, should your Majesty in your most gracious royal intention think proper to retain them therein, they should only be considered as supernumerary members, and would have to justify their qualifications in landed property, and resign their places of profit.

The legislative council not to be subject to dissolution.

The members not to accept, otherwise than by bill, places of profit or honor during good pleasure, excepting those of justice of the peace, and in the militia, nor become accountable for public money, nor receive any from the executive government, under whatever denomination, without subjecting themselves to a re-election.

The individuals who offer themselves as candidates, to make oath as to their qualifications; if the candidates are not present, three electors may make affirmation as to that qualification, to the best of their knowledge. The members elected shall, before they take their seats, take the same oath, and shall be bound to renew it at all times upon order of the body.

[1] A motion against the legislative council as at present constituted was passed in the house of assembly, January, 1833, by 34 votes to 26.

When it happens that members are elected at the same time both for the legislative council and for the assembly, they shall make choice of either one or the other of the houses, within a prescribed time.

We cannot close our present humble address to your Majesty, without expressing how much we should have desired to have received the particular statement of the views of your Majesty's government on this important subject, as announced by the right honorable lord viscount Goderich, your Majesty's principal secretary of state for the colonies, in his despatch of the 7th July, 1831, addressed to his excellency the governor in chief of this province, and that the same has not yet been communicated to us, so as to aid us in our endeavours to remedy an acknowledged and instant evil. Wherefore we, the faithful subjects of your Majesty, do most humbly pray that your Majesty will be pleased to take these our representations into your gracious and favourable consideration, and grant such remedy therein as to your Majesty in your wisdom may seem proper.

And as well from inclination, as from a sense of duty, we shall not fail ever to pray for your Majesty's sacred person.

## LXXXI

## ADDRESS OF THE LEGISLATIVE COUNCIL OF LOWER CANADA, 1833 [1]

[Trans.: Christie, *op. cit.*]

To the King's Most Excellent Majesty.

Most gracious Sovereign,—We your Majesty's dutiful and loyal subjects, the legislative council of Lower Canada, in provincial parliament assembled, having had under our serious consideration, the dangerous and unconstitutional proceedings adopted by the assembly, are impelled by a sense of duty to your Majesty, and your Majesty's faithful Canadian people, humbly to approach your Majesty's throne, with a representation of the alarming posture of the affairs of this province, and our earnest supplication for immediate and effectual relief.

From the invariable state of peace and prosperity to which we had attained under the constitution, bestowed upon us by your Majesty's royal father and the Imperial parliament, we are approaching to a state of anarchy and confusion —unceasing attempts are made to destroy the confidence which has hitherto subsisted between the subjects of your Majesty of different origin and language—the interests of agriculture and commerce and the wants of the people are neglected for the advancement of the cabals of party—your Majesty's representative is falsely charged with partiality and injustice in the exercise of the powers confided to him—your Majesty's officers, both civil and military, are deliberately libelled, as a combined faction, actuated by interest alone, to struggle for the support of a corrupt government, adverse to the rights and wishes of the people—and this unmerited abuse has, for years past, been as frequent within the walls of the assembly as without—nor can it be doubted that this system has been adopted and urged, with the wicked intention to degrade the local authorities in the eyes of the people, and thereby ultimately to render them powerless and inefficient for the support of your Majesty's government in this province.

Everything indicates a continuance, if not an increase, of the evils which we have briefly enumerated—for while your Majesty's officers, and particularly the judges of your Majesty's courts of law, are accused and defamed, a competent tribunal within the colony, to which they might appeal for trial and vindication, is refused—whereby a timid, instead of a fearless and independent exercise of their functions is to be apprehended; and with a view to the completion of its designs, the assembly has ventured on the daring step of addressing your Majesty to render the legislative council elective.

The crisis at which we have arrived is pregnant with consequences of the deepest interest to the happiness and welfare of your Majesty's subjects in this province, and at such a moment, it would be criminal in the legislative council, to withhold from your Majesty, the frank and candid avowal of its sentiments.

The efforts of the assembly have been obviously directed, for several years past, to the attainment of power and influence, at the expense of the crown, and

[1] This address is the legislative council's answer to the previous document.

in direct violation of the constitutional rights and privileges of the legislative council. In illustration of this, we respectfully advert to the persevering endeavours of that house to obtain the entire controul and disposal of all the provincial revenue and income, refusing, at the same time, to make any adequate permanent provision for the expenses of the civil government, and to provide for the independence of the judiciary,—to the conditions and instructions annexed to the votes of certain sums contained in the bill of supply, sent up during the present session, which strike at the existence of your Majesty's prerogative to appoint to all offices of honor or profit in the colony,—to the claim advanced by the assembly to preserve this extensive and important part of your Majesty's dominions, (in which there is room for millions of inhabitants) as a colony to be settled only by Canadians of French origin and descent, contrary to the just and manifest rights of your Majesty's native born subjects,—and lastly, in the attempt to induce your Majesty to adopt a measure which would destroy the equilibrium of the constitution, by substituting an elective council for the intermediate branch established by law. In reference to the pretension last noticed, we humbly entreat your Majesty's attention to the undeniable fact, that in proportion as your Majesty has graciously been pleased to increase the constitutional weight and efficiency of the legislative council, by the addition of members, unconnected with the local administration, and largely taken from the assembly itself, the efforts of that house for its entire abolition have become more and more violent and daring.

That the constitution of government established in this province, under the act passed in the 31st year of the reign of his Majesty king George the third, chapter 31, has been efficacious in promoting the welfare and happiness of the inhabitants thereof, and in confirming their attachment to the British throne, are facts powerfully attested by the peaceable submission of the people to the laws, and the readiness with which they have on all occasions defended the province against foreign aggression, as well as by the petitions laid at the foot of the throne in the years 1814 and 1828, and the addresses, at those periods, of the assembly itself, in which they entreated his late Majesty and the Imperial parliament "to maintain the inhabitants of Canada in the full enjoyment of the constitution as established by law, without any change whatever."

It was in the year 1831, after the general election for the assembly, now in session, and when some grounds of complaint against the local administration were in course of being redressed by the interposition of the Imperial government, that a desire for a change in the constitution was first openly avowed in that body, and it is a matter of astonishment that a violent and reckless party in that house, should be able to induce a majority of its members into an attempt to destroy a form of government, under which your Majesty's Canadian people have enjoyed a state of peace, security and contentment, scarcely exceeded by any part of the world, and against which no considerable portion of the people have yet formally complained.[1]

While, therefore, the legislative council desire not to conceal from your Majesty, the actual state of the province, they are far from believing that the great body of the people yet participate in the views and wishes of the majority of the assembly, but in a community in which education has made so little progress, even the well-disposed, the happy, and contented, are too liable to be misled by the factious and designing.

The constitution enables your Majesty to uphold an independent branch of the legislature, by a judicious selection of the members chosen to compose it, and we venture, with all humility, to state to your Majesty, that a branch so chosen is essential to sustain your royal prerogative, to maintain the connection, which happily subsists between this colony and the mother country, and to give security to a numerous class of your Majesty's subjects of British origin, now numbering about one hundred and fifty thousand souls, scattered over this province, whose interests cannot be adequately represented in an assembly, seven-eights of the members whereof are of French origin, and speak the French language.

It is under the circumstances above described that the assembly have proposed to your Majesty to abolish this house, and to substitute in its place a council to be elected [2] by proprietors of estates of ten pounds annual value; a measure well conceived to further the desired object of obtaining a legislative body, in

[1] See Christie, iii, pp. 368 ff.

[2] See No. LXXX.

all respects, the counterpart of the assembly, inasmuch as that would virtually embrace the whole constituency of the country.

Having maturely considered, we trust without improper bias, the nature of the alterations in the constitution, proposed by the assembly, we intreat your Majesty duly to weigh the opinion which we now humbly submit, as to the fatal consequences which may be expected to result from such a change. Its more immediate effects would be to render all offices in the colony elective—to unsettle the minds of your Majesty's subjects of British origin respecting the security of life and property, which they now enjoy—to prevent their further increase through emigration and to sever the ties which bind the colony to the parent state; while its ultimate result would bring into collision the people of Upper and Lower Canada and drench the country with blood, for it is our solemn conviction that the inhabitants of Upper Canada will never quietly permit the interposition of a French republic between them and the ocean.[1]

When the leaders of the assembly, in the year 1831, first openly declared themselves against the constitution, they found means of inducing a member of this house to proceed to England, for the sole avowed purpose of supporting the petitions of the assembly to your Majesty, and they have since, from year to year, procured the prolongation of his mission. We humbly submit that the representation made by this gentleman to your Majesty's government, ought to be received with extreme caution, because the legislative council have never assented to the mission—have never had official communication of any instructions given to him, or of despatches from him—and he has committed a gross breach of the constitutional rights of the house, by receiving a large annual salary from the assembly, knowing the same to be without the sanction of law, paid to him out of the public money, advanced upon the simple votes of that house for defraying its ordinary contingent expenses.

Upon all these circumstances, the legislative council earnestly beseech your Majesty to take into your most serious consideration, the present alarming posture of affairs in your Majesty's once happy province of Lower Canada—to be graciously pleased to adopt such measures, as in your wisdom will tend to tranquillize the minds, to maintain the constitutional rights and liberties of all your Majesty's subjects therein, and thus guarantee the permanence of the existing connexion between the colony and the parent state.

## LXXXII

## AYLMER TO HOUSE OF ASSEMBLY OF LOWER CANADA

[Trans.: Christie, *op. cit.*]

Castle of St. Lewis,
14th Jan., 1834.

The governor in chief communicates to the house of assembly, for its information, an extract from a despatch addressed to him by the secretary of state for the colonial department, in answer to the petition of the house addressed to the king,[2] which by desire of the house, was transmitted to the secretary of state during the last session, for the purpose of being laid at the foot of the throne:—

"I have also laid before the king, the addresses of the house of assembly. I cannot pass over this document without observation. The object of this address is to pray his Majesty to sanction a national convention of the people of Canada, for the purpose of superseding the legislative authorities, and taking into their consideration in which of two modes the constitution of Lower Canada shall be altogether destroyed.—Whether by the introduction of the elective principle or by the entire abolition of the legislative council. On the mode proposed, his Majesty is willing to put no harsher construction than that of extreme inconsiderateness: to the object sought to be obtained, his Majesty can never be advised to assent, as deeming it inconsistent with the very existence of monarchical institutions. To every measure which may secure the independence and raise the character of the legislative council, his Majesty will be most ready to assent. In 1828, a committee [3] of the house of commons carefully investigated the grievances alleged by the inhabitants of the Canadas, and amongst them the

[1] This section of the petition received a rebuke from England in a dispatch from lord Goderich. See Christie, iii, 490. [2] See No. LXXX. [3] See No. LXXVI.

constitution of the legislative council was a matter of serious deliberation. The committee reported that one of the most important subjects to which their enquiries had been directed was the state of the legislative council in both the Canadas, and the manner in which those assemblies had answered the purposes for which they were instituted. The committee strongly recommended that a more independent character should be given to those bodies, that the majority of their members should not consist of persons holding offices at the pleasure of the crown, and that any other measures that might tend to connect more intimately that branch of the constitution with the interests of the Colonies would be attended with the greatest advantage. With respect to the judges, with the exception only of the chief justice, whose presence on particular occasions, might be necessary, the committee entertained no doubt that they had better not be involved in the political business of the house. An examination of the constitution of the body at that period and the present, will sufficiently show in what spirit his Majesty's government have laboured to accomplish the wishes of parliament. The house of assembly state correctly that it has often been avowed that the people of Canada should see nothing in the institutions of neighbouring countries to which they should look with envy. I have yet to learn that his Majesty's subjects in Canada entertain such sentiments at present, or that they desire to copy in a monarchical government all the institutions of a republic, or to have the mockery of an executive absolutely dependent for its existence upon a popular body, usurping the whole authority of the State. I am not prepared to advise his Majesty to recommend to parliament so serious a step as the repeal of the act of 1791, whereby the institutions of this country were conferred separately upon the provinces of Upper and Lower Canada.—Serious as are the difficulties by which your lordship's administration is beset, they are yet not such as to induce me to despair of the practical working of the British constitution; but should events unhappily force upon parliament the exercise of its supreme authority to compose the internal dissensions of the colonies, it would be my object, and my duty as a servant of the crown, to submit to parliament such modification of the charter of the Canadas, as should tend, not to the introduction of institutions inconsistent with monarchical government, but to maintaining and strengthening the connection with the mother country, by a close adherence to the spirit of the British constitution, and by preserving in their proper place, and within their due limits, the mutual rights and privileges of all classes of his Majesty's subjects." [1]

## LXXXIII

## THE NINETY-TWO RESOLUTIONS OF 1834 [2]

[Trans.: *Blue Books relating to Canada*, vol. VI, 1836.]

Resolutions of the House of Assembly of *Lower Canada*, dated Quebec, Friday, 21 February, 1834.

1. Resolved, *That* His Majesty's loyal subjects, the people of this province of Lower Canada, have shown the strongest attachment to the British Empire, of which they are a portion; that they have repeatedly defended it with courage in time of war; that at the period which preceded the Independence of the late British Colonies on this continent, they resisted the appeal [3] made to them by those colonies to join their confederation.

2. Resolved, That the people of this province have at all times manifested their confidence in His Majesty's Government, even under circumstances of the greatest difficulty, and when the government of the province has been admin-

[1] This dispatch was severely criticized in 'The Ninety-Two Resolutions' (No. LXXXIII), and was expunged from the journals of the house.

[2] These resolutions were introduced by Elzéar Bédard, first mayor of Quebec. They were first embodied in an address to the governor-general, lord Aylmer, and then forwarded to England, where their subject matter was debated in the house of commons at the instance of J. A. Roebuck, M.P. for Bath, who had been agent in England for Lower Canada since 1833. Their historical interest is largely due to the fact that they mark the parting of the ways among the 'reformers' in Lower Canada, and that they led to the formation of the constitutional societies of Montreal and Quebec. They are printed here in full, as they illustrate better than any other document the matured attitude of Papineau and his followers, and distinguish them from the moderate and constitutional radicals, led by John Neilson.

[3] See No. XXXIII.

istered by men who trampled under foot the rights and feelings dearest to British subjects; and that these sentiments of the people of this province remain unchanged.

3. Resolved, That the people of this province have always shown themselves ready to welcome and to receive as brethren, those of their fellow-subjects who, having quitted the United Kingdom or its dependencies, have chosen this province as their home, and have earnestly endeavoured (as far as on them depended) to afford every facility to their participating in the political advantages, and in the means of rendering their industry available, which the people of this province enjoy; and to remove for them the difficulties arising from the vicious system adopted by those who have administered the government of the province, with regard to those portions of the country in which the new-comers have generally chosen to settle.

4. Resolved, That this House, as representing the people of this province, has shown an earnest zeal to advance the general prosperity of the country, by securing the peace and content of all classes of its inhabitants, without any distinction of origin or creed, and upon the solid and durable basis of unity of interest, and equal confidence in the protection of the mother country.

5. Resolved, That this House has seized every occasion to adopt, and firmly to establish by law in this province, not only the Constitutional and Parliamentary law of England, which is necessary to carry the Government into operation, but also all such parts of the public law of the United Kingdom as have appeared to this House adapted to promote the welfare and safety of the people, and to be conformable to their wishes and their wants; and that this House has, in like manner, wisely endeavoured so to regulate its proceedings as to render them, as closely as the circumstances of this colony permit, analogous to the practice of the House of Commons of the United Kingdom.

6. Resolved, That in the year 1827, the great majority of the people of this province complained, in petitions signed by 87,000 persons, of serious and numerous abuses which then prevailed, many of which had then existed for a great number of years, and of which the greater part still exist without correction or mitigation.

7. Resolved, That the complaints aforesaid, and the grievance which gave rise to them, being submitted to the consideration of the Parliament of the United Kingdom, occasioned the appointment of a Committee of the House of Commons, of which the Honourable Edward Geoffrey Stanley, now His Majesty's Principal Secretary of State for the Colonial Department, and several others who are now Members of His Majesty's Government, formed part; and that after a careful investigation and due deliberation, the said Committee, on the 18th July 1828,[1] came to the following very just conclusions:

1stly. "That the embarrassments and discontents that had long prevailed in the Canadas had arisen from serious defects in the system of laws and the constitutions established in those colonies.

2dly. "That these embarrassments were in a great measure to be attributed to the manner in which the existing system had been administered.

3dly. "That they had a complete conviction that neither the suggestions which they had made, nor any other improvements in the laws and constitutions of the Canadas, will be attended with the desired effect, unless an impartial, conciliating and constitutional system of government were observed in these loyal and important colonies."

8. Resolved, That since the period aforesaid, the constitution of this province, with its serious defects, has continued to be administered in a manner calculated to multiply the embarrassments and discontents which have long prevailed; and that the recommendations of the Committee of the House of Commons have not been followed by effective measures of a nature to produce the desired effect.

9. Resolved, That the most serious defect in the Constitutional Act, its radical fault, the most active principle of evil and discontent in the province; the most powerful and most frequent cause of abuses of power; of the infraction of the laws; of the waste of the public revenue and property, accompanied by impunity to the governing party, and the oppression and consequent resentment of the governed, is that injudicious enactment, the fatal results of which were foretold by the Honourable Charles James Fox at the time of its adoption, which invests the Crown with that exorbitant power (incompatible with any government duly

[1] See No. LXXVI.

balanced, and founded on law and justice, and not on force and coercion) of selecting and composing without any rule or limitation, or any predetermined qualification, an entire branch of the legislature, supposed from the nature of its attributions to be independent, but inevitably the servile tool of the authority which creates, composes and decomposes it, and can on any day modify it to suit the interests or the passions of the moment.

10. Resolved, That with the possession of a power so unlimited, the abuse of it is inseparably connected; and that it has always been so exercised in the selection of the Members of the Legislative Council of this province, as to favour the spirit of monopoly and despotism in the executive, judicial and administrative departments of government, and never in favour of the public interest.

11. Resolved, That the effectual remedy for this evil was judiciously foreseen and pointed out by the Committee of the House of Commons, who asked John Neilson, esquire, (one of the agents who had carried to England the Petition of the 87,000 inhabitants of Lower Canada) whether he had turned in his mind any plan by which he conceived the Legislative Council might be better composed in Lower Canada; whether he thought it possible that the said body could command the confidence and respect of the people, or go in harmony with the House of Assembly, unless the principle of election were introduced into its composition in some manner or other; and also, whether he thought that the colony could have any security that the Legislative Council would be properly and independently composed, unless the principle of election were introduced into it in some manner or other; and received from the said John Neilson answers, in which (among other reflections) he said in substance, that there were two modes in which the composition of the Legislative Council might be bettered; the one by appointing men who were independent of the executive, (but that to judge from experience there would be no security that this would be done,) and that if this mode were found impracticable, the other would be to render the Legislative Council elective.

12. Resolved, That judging from experience, this House likewise believes that there would be no security in the first mentioned mode, the course of events having but too amply proved what was then foreseen; and that this House approves all the inferences drawn by the said John Neilson from experience and facts; but that with regard to his suggestion that a class of electors of a higher qualification should be established, or a qualification in property fixed for those persons who might sit in the Council, this House have, in their Address to His Most Gracious Majesty, dated the 20th March 1833,[1] declared in what manner this principle could, in their opinion, be rendered tolerable in Canada, by restraining it within certain bounds, which should in no case be passed.

13. Resolved, That even in defining bounds of this nature, and requiring the possession of real property as a condition of eligibility to a Legislative Council, chosen by the people, which most wisely and happily has not been made a condition of eligibility to the House of Assembly, this House seems rather to have sought to avoid shocking received opinions in Europe, where custom and the law have given so many artificial privileges and advantages to birth and rank and fortune, than to consult the opinions generally received in America, where the influence of birth is nothing, and where, notwithstanding the importance which fortune must always naturally confer, the artificial introduction of great political privileges in favour of the possessors of large property, could not long resist the preference given at free elections to virtue, talents and information, which fortune does not exclude but can never purchase, and which may be the portion of honest, contented and devoted men, whom the people ought to have the power of calling and consecrating to the public service, in preference to richer men, of whom they may think less highly.

14. Resolved, That this House is nowise disposed to admit the excellence of the present Constitution of Canada, although His Majesty's Secretary of State for the Colonies has unreasonably and erroneously asserted, that it has conferred on the two Canadas the institutions of Great Britain; nor to reject the principle of extending the system of frequent elections much further than it is at present carried; and that this system ought especially to be extended to the Legislative Council, although it may be considered by the Colonial Secretary incompatible with the British Government, which he calls a monarchical government, or too analogous to the institutions which the several States, composing the industrious,

[1] No. LXXX.

moral and prosperous confederation of the United States of America, have adopted for themselves.

15. Resolved, That in a despatch, of which the date is unknown, and of which a part only was communicated to this House by the Governor-in-chief on the 14th January, 1834,[1] His Majesty's Secretary of State for the Colonial Department, (this House having no certain knowledge whether the said despatch is from the present Colonial Secretary or from his predecessor) says, that an examination of the composition of the Legislative Council at that period (namely, at the time when its composition was so justly censured by a Committee of the House of Commons) and at the present, will sufficiently show in what spirit His Majesty's Government has endeavoured to carry the wishes of Parliament into effect.

16. Resolved, that this House receives with gratitude this assurance of the just and benevolent intentions, with which, in the performance of their duty, His Majesty's Ministers have endeavoured to give effect to the wishes of Parliament.

17. Resolved, That unhappily it was left to the principal Agent of His Majesty's Government in this Province to carry the wishes of the Imperial Parliament into effect; but that he has destroyed the hope which His Majesty's faithful subjects had conceived of seeing the Legislative Council reformed and ameliorated, and has confirmed them in the opinion that the only possible mode of giving to that body the weight and respectability which it ought to possess, is to introduce into it the principle of election.

18. Resolved, That the Legislative Council, strengthened by a majority inimical to the rights of this House and of the people whom it represents, has received new and more powerful means than it before possessed of perpetuating and of rendering more offensive and more hurtful to the country the system of abuses of which the people of this province have up to this day ineffectually complained, and which up to this day, Parliament and His Majesty's Government in England have ineffectually sought to correct.

19. Resolved, That since its pretended reform the Legislative Council has, in a manner more calculated to alarm the inhabitants of this province, and more particularly in its address [2] to His Majesty of the 1st of April 1833, renewed its pretension of being specially appointed to protect one class of His Majesty's subjects in this province, as supposing them to have interests which could not be sufficiently represented in the Assembly, seven-eighths of the Members of which are by the said Council most erroneously stated to be of French origin and speak the French language: that this pretension is a violation of the constitution, and is of a nature to excite and perpetuate among the several classes of the inhabitants of this province, mutual distrust and national distinctions and animosities, and to give one portion of the people an unjust and factious superiority over the other, and the hope of domination and undue preference.

20. Resolved, That by such claim the Legislative Council after a reform which was held up as one adapted to unite it more closely with the interests of the colony in conformity with the wishes of Parliament, calls down, as one of its first acts, the prejudices and severity of His Majesty's Government upon the people of this province, and upon the representative branch of the Legislature thereof; and that by this conduct the Legislative Council has destroyed amongst the people all hope which was left them of seeing the said Council, so long as it shall remain constituted as it now is, act in harmony with the House of Assembly.

21. Resolved, That the Legislative Council of this Province has never been anything else but an impotent screen between the Governor and the people, which by enabling the one to maintain a conflict with the other, has served to perpetuate a system of discord and contention; that it has unceasingly acted with avowed hostility to the sentiments of the people as constitutionally expressed by the House of Assembly; that it is not right under the name of a Legislative Council to impose an aristocracy on a country which contains no natural materials for the composition of such a body; that the Parliament of the United Kingdom in granting to His Majesty's Canadian subjects the power of revising the Constitution under which they hold their dearest rights, would adopt a liberal policy, free from all considerations of former interests and of existing prejudices; and that by this measure, equally consistent with a wise and sound policy, and with the most liberal and extended views, the Parliament of the United Kingdom

[1] See No. LXXXII. [2] See No. LXXXI.

would enter into a noble rivalry with the United States of America, would prevent His Majesty's subjects from seeing anything to envy there; and would preserve a friendly intercourse between Great Britain and this province, as her colony, so long as the tie between us shall continue, and as her ally, whenever the course of events may change our relative position.

22. Resolved, That this House so much the more confidently emits the opinions expressed in the preceding resolution, because, if any faith is to be placed in the published reports, they were at no distant period emitted with other remarks in the same spirit, in the Commons House of the United Kingdom, by the Right Honourable Edward Geoffrey Stanley, now His Majesty's Principal Secretary of State for the Colonial Department, and by several other enlightened and distinguished Members, some of whom are among the number of His Majesty's present Ministers; and because the conduct of the Legislative Council since its pretended reform demonstrates that the said opinions are in nowise rendered less applicable or less correct by its present composition.

23. Resolved, That the Legislative Council has at the present time less community of interest with the province than at any former period; that its present composition, instead of being calculated to change the character of the body, to put an end to complaints, and to bring about that co-operation of the two Houses of the Legislature which is so necessary to the welfare of the country, is such as to destroy all hope that the said Council will adopt the opinions and sentiments of the people of this province and of this House with regard to the inalienable right of the latter to the full and entire control of the whole revenue raised in the province, with regard to the necessity under which this House has found itself (for the purpose of effecting the reformation which it has so long and so vainly demanded of existing abuses) to provide for the expenses of the Civil Government by annual appropriations only, as well as with regard to a variety of other questions of public interest, concerning which the Executive Government, and the Legislative Council which it has selected and created, differ diametrically from the people of this province, and from this House.

24. Resolved, That such of the recently appointed councillors as were taken from the majority of the Assembly, and had entertained the hope that a sufficient number of independent men, holding opinions in unison with those of the majority of the people and of their Representatives, would be associated with them, must now feel that they are overwhelmed by a majority hostile to the country, and composed of men who have irretrievably lost the public confidence, by showing themselves the blind and passionate partisans of all abuses of power, by encouraging all the acts of violence committed under the administration of Lord Dalhousie, by having on all occasions outraged the representatives of the people of the country; of men, unknown in the country until within a few years, without landed property or having very little, most of whom have never been returned to the Assembly (some of them having even been refused by the people), and who have never given any proofs of their fitness for performing the functions of Legislators, but merely of their hatred to the country; and who, by reason of their community of sentiment with him, have found themselves, by the partiality of the Governor-in-Chief, suddenly raised to a station in which they have the power of exerting during life an influence over the legislation and over the fate of this province, the laws and institutions of which have ever been the objects of their dislike.

25. Resolved, That in manifest violation of the Constitution, there are among the persons last mentioned several who were born citizens of the United States, or are natives of other foreign countries, and who at the time of their appointment had not been naturalized by Acts of the British Parliament; that the residence of one of these persons (Horatio Gates) in this country during the last war with the United States was only tolerated; he refused to take up arms for the defence of the country in which he remained merely for the sake of lucre; and after these previous facts, took his seat in the Legislative Council on the 16th March, 1833; and 15 days afterwards, to wit, on the 1st April, voted for the address before mentioned, censuring those who during the last war were under arms on the frontiers to repulse the attacks of the American armies and of the fellow-citizens of the said Horatio Gates: that another (James Baxter) was resident during the said late war within the United States, and was bound by the laws of the country of his birth, under certain circumstances, forcibly to invade this province, to pursue, destroy and capture, if possible, His Majesty's

armies, and such of his Canadian subjects as were in arms upon the frontiers to repulse the attacks of the American armies, and of the said James Baxter, who (being at the same time but slightly qualified as far as property is concerned) became, by the nomination of the Governor-in-Chief, a Legislator for life in Lower Canada, on the 22d of March, 1833; and eight days afterwards, on the 1st of April aforesaid, voted that very address which contained the calumnious and insulting accusation which called for the expression of His Majesty's just regret, "that any word had been introduced which should have the appearance of ascribing to a class of his subjects of one origin, views at variance with the allegiance which they owe to His Majesty." [1]

26. Resolved, That it was in the power of the present Governor-in-Chief, more than in that of any of his predecessors (by reason of the latitude allowed him as to the number and the selection of the persons whom he might nominate to be Members of the Legislative Council) to allay, for a time at least, the intestine divisions which rend this colony, and to advance some steps towards the accomplishment of the wishes of Parliament, by inducing a community of interest between the said Council and the people, and by giving the former a more independent character by judicious nominations.

27. Resolved, That although 16 persons have been nominated in less than two years by the present Governor to be Members of the said Council (a number greater than that afforded by any period of 10 years under any other administration), and notwithstanding the wishes of Parliament, and the instructions given by His Majesty's Government for the removal of the grievances of which the people had complained, the same malign influence which has been exerted to perpetuate in the country a system of irresponsibility in favour of public functionaries, has prevailed to such an extent as to render the majority of the Legislative Council more inimical to the country than at any former period; and that this fact confirms with irresistible force the justice of the censure passed by the Committee of the House of Commons on the constitution of the Legislative Council as it had theretofore existed, and the correctness of the opinion of those Members of the said Committee who thought that the said body could never command the respect of the people, nor be in harmony with the House of Assembly, unless the principle of election was introduced into it.

28. Resolved, That even if the present Governor-in-Chief had, by making a more judicious selection, succeeded in quieting the alarm and allaying for a time the profound discontent which then prevailed, that form of government would not be less essentially vicious which makes the happiness or misery of a country depend on an Executive over which the people of that country have no influence, and which has no permanent interest in the country, or in common with its inhabitants; and that the extension of the elective principle is the only measure which appears to this House to afford any prospect of equal and sufficient protection in future to all the inhabitants of the province, without distinction.

29. Resolved, That the accusations preferred against the House of Assembly by the Legislative Council, as recomposed by the present Governor-in-Chief, would be criminal and seditious, if their very nature did not render them harmless, since they go to assert, that if in its liberality and justice the Parliament of the United Kingdom had granted the earnest prayer of this House in behalf of the province (and which this House at this solemn moment, after weighing the Despatches of the Secretary of State for the Colonial Department, and on the eve of a general election, now repeats and renews), that the constitution of the Legislative Council may be altered by rendering it elective, the result of this act of justice and benevolence would have been to inundate the country with blood.

30. Resolved, That by the said Address to His Majesty, dated the 1st of April last, the Legislative Council charges this House with having calumniously accused the King's Representative of partiality and injustice in the exercise of the powers of his office, and with deliberately calumniating His Majesty's officers, both civil and military, as a faction induced by interest alone to contend for the support of a government inimical to the rights, and opposed to the wishes of the people: with reference to which this House declares, that the accusations preferred by it have never been calumnious, but are true and well founded, and that a faithful

[1] See a dispatch from the secretary of state for the colonial department quoted to the legislative council by lord Aylmer, in giving them the reply of the British government to their 'address' (No. LXXXI), January 14, 1834. (Christie, iii, 491.)

picture of the Executive Government of this province in all its parts is drawn by the Legislative Council in this passage of its address.

31. Resolved, That if, as this House is fond of believing, His Majesty's Government in England does not wish systematically to nourish civil discord in this colony, the contradictory allegations thus made by the two Houses, make it imperative on it to become better acquainted with the state of the province than it now appears to be, if we judge from its long tolerance of the abuses which its agents commit with impunity; that it ought not to trust to the self praise of those who have the management of the affairs of a colony, passing, according to them, into a state of anarchy; that it ought to be convinced, that if its protection of public functionaries, accused by a competent authority (that is to say by this House, in the name of the people), could for a time by force and intimidation aggravate, in favour of those functionaries and against the rights and interests of the people, the system of insult and oppression which they impatiently bear, the result must be to weaken our confidence in, and our attachment to His Majesty's Government, and to give deep root to the discontent and insurmountable disgust which have been excited by administrations deplorably vicious, and which are now excited by the majority of the public functionaries of the colony, combined as a faction, and induced by interest alone to contend for the support of a corrupt Government, inimical to the rights and opposed to the wishes of the people.

32. Resolved, That in addition to its wicked and calumnious address of the 1st April, 1833, the Legislative Council, as recomposed by the present Governor-in-chief, has proved how little community of interest it has with the colony, by the fact, that out of sixty-four Bills which were sent up to it, twenty-eight were rejected by it, or amended in a manner contrary to their spirit and essence; that the same unanimity which had attended the passing of the greater part of these Bills in the Assembly, accompanied their rejection by the Legislative Council, and that an opposition so violent shows clearly that the provincial executive and the council of its choice, in league together against the representative body, do not, or will not, consider it as the faithful interpreter and the equitable judge of the wants and wishes of the people, nor as fit to propose laws conformable to the public will; and that under such circumstances, it would have been the duty of the head of the Executive to appeal to the people, by dissolving the Provincial Parliament, had there been any analogy between the institutions of Great Britain and those of this province.

33. Resolved, That the legislative Council as recomposed by the present Governor-in-chief must be considered as embodying the sentiments of the colonial executive Government, and that from the moment it was so recomposed, the two authorities seem to have bound and leagued themselves together for the purpose of proclaiming principles subversive of all harmony in the province, and of governing and domineering in a spirit of blind and invidious national antipathy.

34. Resolved, That the address voted unanimously on the 1st April, 1833, by the Legislative Council, as recomposed by the present Governor-in-chief, was concurred in by the Honourable the Chief Justice of the province, Jonathan Sewell, to whom the Right Honourable Lord Viscount Goderich, in his Despatch, communicated to the House on the 25th November, 1831, recommended "a cautious abstinence from all proceedings by which he might be involved in any contention of a party nature;" by John Hale, the present Receiver-General, who, in violation of the laws, and of the trust reposed in him, and upon illegal warrants issued by the Governor, has paid away large sums of the public money, without any regard to the obedience which is always due to the law; by Sir John Caldwell, baronet, the late Receiver-General, a peculator, who has been condemned to pay nearly £100,000, to reimburse a like sum levied upon the people of this province, and granted by law to His Majesty, His heirs and successors, for the public use of the province, and for the support of His Majesty's Government therein, and who has diverted the greater part of the said sum from the purposes to which it was destined, and appropriated it to his private use; by Mathew Bell, a grantee of the Crown, who has been unduly and illegally favoured by the Executive, in the lease of the forges of St. Maurice, in the grant of large tracts of waste lands, and in the lease of large tracts of land formerly belonging to the order of Jesuits; by John Stewart, an Executive Councillor, commissioner of the Jesuits' estates, and the incumbent of other lucrative offices: all of whom are placed by their pecuniary and personal interests under the influence of the

Executive; and by the Honourable George Moffatt, Peter M'Gill, John Molson, Horatio Gates, Robert Jones, and James Baxter, all of whom, as well as those before mentioned, were, with two exceptions, born out of the country, and all of whom, except one, who for a number of years was a member of the Assembly, and has extensive landed property, are but slightly qualified in that respect, and had not been sufficiently engaged in public life to afford a presumption that they were fit to perform the functions of legislators for life; and by Antoine Gaspard Couillard, the only native of the country, of French origin, who stooped to concur in the address, and who also had never been engaged in public life, and is but very moderately qualified with respect to real property, and who, after his appointment to the council, and before the said 1st of April, rendered himself dependent on the Executive by soliciting a paltry and subordinate place of profit.

35. Resolved, That the said address, voted by seven councillors, under the influence of the present head of the Executive, and by five others of his appointment, (one only of the six others who voted it, the Hon. George Moffatt, having been appointed under his predecessor,) is the work of the present administration of this province, the expression of its sentiments, the key to its acts, and the proclamation of the iniquitous and arbitrary principles, which are to form its rule of conduct for the future.

36. Resolved, That the said address is not less injurious to the small number of Members of the Legislative Council who are independent, and attached to the interests and honour of the country, who have been Members of the Assembly, and are known as having partaken its opinions and seconded its efforts, to obtain for it the entire control and disposal of the public revenue; as having approved the wholesome, constitutional, and not, as styled by the Council, the daring step taken by this House of praying by address to His Majesty that the Legislative Council might be rendered elective; as condemning the scheme for the creation of an extensive monopoly of lands in favour of speculators residing out of the country; as believing that they could not have been appointed to the Council with a view to increase the constitutional weight and efficacy of that body, in which they find themselves opposed to a majority hostile to their principles and their country; as believing that the interests and wishes of the people are faithfully represented by their representatives, and that the connexion between this country and the parent state will be durable in proportion to the direct influence exercised by the people in the enactment of laws adapted to ensure their welfare; and as being of opinion, that His Majesty's subjects recently settled in this country will share in all the advantages of the free institutions and of the improvements which would be rapidly developed, if, by means of the extension of the elective system, the administration were prevented from creating a monopoly of power and profit in favour of the minority who are of one origin, and to the prejudice of the majority who are of another, and from buying, corrupting and exciting a portion of this minority in such a manner as to give to all discussions of local interest the alarming character of strife and national antipathy; and that the independent Members of the Legislative Council, indubitably convinced of the tendency of that body, and undeceived as to the motives which led to their appointment as Members of it, now refrain from attending the sittings of the said Council, in which they despair of being able to effect anything for the good of the country.

37. Resolved, That the political world in Europe is at this moment agitated by two great parties, who in different countries appear under the several names of serviles, royalists, tories and conservatives on the one side, and of liberals, constitutionals, republicans, whigs, reformers, radicals and similar appellations on the other; that the former party is, on this continent, without any weight or influence except what it derives from its European supporters, and from a trifling number of persons who become their dependents for the sake of personal gain, and from others, who from age or habit cling to opinions which are not partaken by any numerous class; while the second party overspreads all America. And that the Colonial Secretary is mistaken if he believes that the exclusion of a few salaried officers from the Legislative Council could suffice to make it harmonize with the wants, wishes and opinions of the people, as long as the Colonial Governors retain the power of preserving in it a majority of members rendered servile by their antipathy to every liberal idea.

38. Resolved, That this vicious system, which has been carefully maintained,

has given to the Legislative Council a greater character of animosity to the country than it had at any former period, and is as contrary to the wishes of Parliament, as *that* which, in order to resist the wishes of the people of England for the Parliamentary Reform, should have called into the House of Lords a number of men notorious for their factious and violent opposition to that great measure.

39. Resolved, That the Legislative Council, representing merely the personal opinions of certain members of a body so strongly accused at a recent period by the people of this Province, and so justly censured by the Report of the Committee of the House of Commons, is not an authority competent to demand alterations in the constitutional Act of the 31st Geo. 3, c. 31, and that the said Act ought not to be and cannot be altered, except at such time and in such manner as may be wished by the people of this Province, whose sentiments this House is alone competent to represent; that no interference on the part of the British Legislature with the laws and constitution of this province, which should not be founded on the wishes of the people, freely expressed either through this House or in any other constitutional manner, could in anywise tend to settle any of the difficulties which exist in this province, but, on the contrary, would only aggravate them and prolong their continuance.

40. Resolved, That this House expects from the justice of the Parliament of the United Kingdom, that no measure of the nature aforesaid, founded on the false representations of the Legislative Council and of the members and tools of the Colonial Administration, all interested in perpetuating existing abuses, will be adopted to the prejudice of the rights, liberties and welfare of the people of this province; but that on the contrary, the Imperial Legislature will comply with the wishes of the people and of this House, and will provide the most effectual remedy for all evils present and future, either by rendering the Legislative Council elective in the manner mentioned in the Address of this House to His most gracious Majesty, of the 20th March, 1833, or by enabling the people to express still more directly their opinions as to the measures to be adopted in that behalf, and with regard to such other modifications of the constitution as the wants of the people and the interests of His Majesty's Government in the province may require; and that this House perseveres in the said Address.

41. Resolved, That His Majesty's Secretary of State for the Colonial Department has acknowledged in his despatches, that it has frequently been admitted that the people of Canada ought to see nothing in the institutions of the neighbouring States which they could regard with envy, and that he has yet to learn that any such feeling now exists among His Majesty's subjects in Canada; to which this House answers, that the neighbouring States have a form of government very fit to prevent abuses of power, and very effective in repressing them; that the reverse of this order of things has always prevailed in Canada under the present form of government; that there exists in the neighbouring States a stronger and more general attachment to the national institutions than in any other country, and that there exists also in those States a guarantee for the progressive advance of their political institutions towards perfection, in the revision of the same at short and determinate intervals, by conventions of the people, in order that they may without any shock or violence be adapted to the actual state of things.

42. Resolved, That it was in consequence of a correct idea of the state of the country, and of society generally in America, that the Committee of the House of Commons asked, whether there was not in the two Canadas a growing inclination to see the institutions become more and more popular, and in that respect more and more like those of the United States; and that John Neilson, esquire, one of the agents sent from this country, answered, that the fondness for popular institutions had made great progress in the two Canadas; and that the same agent was asked, whether he did not think that it would be wise that the object of every change made in the institutions of the province should be to comply more and more with the wishes of the people, and to render the said institutions extremely popular: to which question this House for and in the name of the people whom it represents, answers, solemnly and deliberately, "Yes, it would be wise; it would be excellent."

43. Resolved, That the constitution and form of government which would best suit this colony are not to be sought solely in the analogies offered by the institutions of Great Britain, where the state of society is altogether different

from our own; and that it would be wise to turn to profit by the information to be gained by observing the effects produced by the different and infinitely varied constitutions which the Kings and Parliament of England have granted to the several plantations and colonies in America, and by studying the way in which virtuous and enlightened men have modified such colonial institutions when it could be done with the assent of the parties interested.

44. Resolved, That the unanimous consent with which all the American States have adopted and extended the elective system, shows that it is adapted to the wishes, manners and social state of the inhabitants of this continent; that this system prevails equally among those of British and those of Spanish origin, although the latter, during the continuance of their colonial state, had been under the calamitous yoke of ignorance and absolutism; and that we do not hesitate to ask from a Prince of the House of Brunswick, and a reformed Parliament, all the freedom and political powers which the Princes of the House of Stuart and their Parliaments granted to the most favoured of the plantations formed at a period when such grants must have been less favourably regarded than they would now be.

45. Resolved, That it was not the best and most free systems of colonial government which tended most to hasten the independence of the old English colonies; since the Province of New York, in which the institutions were most monarchical in the sense which that word appears to bear in the despatch of the Colonial Secretary, was the first to refuse obedience to an Act of the Parliament of Great Britain; and that the colonies of Connecticut and Rhode Island, which though closely and affectionately connected with the mother country for a long course of years, enjoyed constitutions purely democratic, were the last to enter into a confederation rendered necessary by the conduct of bad servants of the Crown, who called in the supreme authority of the Parliament, and the British Constitution to aid them to govern arbitrarily, listening rather to the governors and their advisers than to the people and their representatives, and shielding with their protection those who consumed the taxes rather than those who paid them.

46. Resolved, That with a view to the introduction of whatever the institutions of the neighbouring States offered that was good and applicable to the state of the province, this House had among other measures passed, during many years, a Bill founded on the principle of proportioning arithmetically the number of Representatives to the population of each place represented; and that if by the pressure of circumstances and the urgent necessity which existed that the number of Representatives should be increased, it has been compelled to assent to amendments which violate that principle, by giving to several counties containing a population of little more than 4,000 souls, the same number of Representatives as to several others of which the population is five times as great, this disproportion is in the opinion of this House an act of injustice, for which it ought to seek a remedy: and that in new countries where the population increases rapidly, and tends to create new settlements, it is wise and equitable that by a frequent and periodical census, such increase, and the manner in which it is distributed, should be ascertained, principally for the purpose of settling the representation of the province on an equitable basis.

47. Resolved, That the fidelity of the people, and the protection of the government, are co-relative obligations, of which the one cannot long subsist without the other; that by reason of the defects which exist in the laws and constitution of this province, and of the manner in which those laws and that constitution have been administered, the people of this province are not sufficiently protected in their lives, their property and their honour; and that the long series of acts of injustice and oppression, of which they have to complain, have increased with alarming rapidity in violence and in number under the present administration.

48. Resolved, That in the midst of these disorders and sufferings, this House and the people whom it represents, had always cherished the hope and expressed their faith that His Majesty's Government in England did not knowingly and wilfully participate in the political immorality of its colonial agents and officers; and that it is with astonishment and grief that they have seen in the extract from the despatches of the Colonial Secretary, communicated to this House by the Governor-in-chief during the present session, that one at least of the members of His Majesty's Government entertains towards them feelings of prejudice and animosity, and inclines to favour plans of oppression and revenge, ill adapted to

change a system of abuses, the continuance of which would altogether discourage the people, extinguish in them the legitimate hope of happiness which, as British subjects, they entertained, and would leave them only the hard alternative of submitting to an ignominious bondage, or of seeing those ties endangered which unite them to the mother country.

49. Resolved, That this House and the people whom it represents do not wish or intend to convey any threat; but that, relying as they do upon the principles of law and justice, they are and ought to be politically strong enough not to be exposed to receive insult from any man whomsoever, or bound to suffer it in silence; that the style of the said extracts from the despatches of the Colonial Secretary, as communicated to this House, is insulting and inconsiderate to such a degree that no legally constituted body, although its functions were infinitely subordinate to those of legislation, could or ought to tolerate them; that no similar example can be found even in the despatches of those of his predecessors in office least favourable to the rights of the colonies; that the tenor of the said despatches is incompatible with the rights and privileges of this House, which ought not to be called in question or defined by the Colonial Secretary, but which, as occasion may require, will be successively promulgated and enforced by this House.

50. Resolved, That with regard to the following expressions in one of the said Despatches, "should events unhappily force upon Parliament the exercise of its supreme authority to compose the internal dissension of the Colonies, it would be my object and my duty, as a servant of the Crown, to submit to Parliament such modifications of the Charter of the Canadas as should tend, not to the introduction of institutions inconsistent with monarchical government, but to maintaining and strengthening the connexion with the mother country, by a close adherence to the spirit of the British constitution, and by preserving in their proper place and within their due limits the mutual rights and privileges of all classes of His Majesty's subjects[1];"—if they are to be understood as containing a threat to introduce into the constitution any other modifications than such as are asked for by the majority of the people of this province, whose sentiments cannot be legitimately expressed by any other authority than its representatives, this House would esteem itself wanting in candour to the people of England, if it hesitated to call their attention to the fact that in less than 20 years the population of the United States of America will be as great or greater than that of Great Britain, and that of British America will be as great or greater than that of the former English Colonies was when the latter deemed that the time was come to decide that the inappreciable advantage of governing themselves instead of being governed, ought to engage them to repudiate a system of Colonial Government which was, generally speaking, much better than that of British America now is.

51. Resolved, That the approbation expressed by the Colonial Secretary, in his said despatch, of the present composition of the Legislative Council, whose acts, since its pretended reform, have been marked by party spirit and by invidious national distinctions and preferences, is a subject of just alarm to His Majesty's Canadian subjects in general, and more particularly to the great majority of them, who have not yielded at any time to any other class of the inhabitants of this province in their attachment to His Majesty's Government, in their love of peace and order, in respect for the laws, and in their wish to effect that union among the whole people which is so much to be desired, to the end that all may enjoy freely and equally the rights and advantages of British subjects, and of the institutions which have been guaranteed to and are dear to the country; that the distinctions and preferences aforesaid have almost constantly been used and taken advantage of by the Colonial Administration of this Province, and the majority of the Legislative Councillors, Executive Councillors, Judges and other functionaries dependent upon it; and that nothing but the spirit of union among the several classes of the people, and their conviction that their interests are the same, could have prevented collisions incompatible with the prosperity and safety of the province.

52. Resolved, That since a circumstance, which did not depend upon the choice of the majority of the people, their French origin and their use of the French language, has been made by the colonial authorities a pretext for abuse, for exclusion, for political inferiority, for a separation of rights and interests;

[1] See No. LXXXII.

this House now appeals to the justice of His Majesty's Government and of Parliament, and to the honour of the people of England; that the majority of the inhabitants of this country are in nowise disposed to repudiate any one of the advantages they derive from their origin and from their descent from the French nation, which, with regard to the progress of which it has been the cause in civilization, in the sciences, in letters, and the arts, has never been behind the British nation, and is now the worthy rival of the latter in the advancement of the cause of liberty and of the science of Government; from which this country derives the greater portion of its civil and ecclesiastical law, and of its scholastic and charitable institutions, and of the religion, language, habits, manners and customs of the great majority of its inhabitants.

53. Resolved, That our fellow-subjects, of British origin, in this province, came to settle themselves in a country, "the inhabitants whereof, professing the religion of the Church of Rome, enjoyed an established form of constitution and system of laws, by which their persons and their property had been protected, governed and ordered, during a long series of years, from the first establishment of the province of Canada;" that, prompted by these considerations, and guided by the rules of justice and of the law of nations, the British Parliament enacted that, "in all matters of controversy, relative to property and civil rights, resort should be had to the laws of Canada;" that when Parliament afterwards departed from the principle thus recognised, firstly, by the introduction of the English criminal law, and afterwards by that of the representative system, with all the constitutional and parliamentary law necessary to its perfect action, it did so in conformity to the sufficiently expressed wish of the Canadian people; and that every attempt on the part of public functionaries or of other persons (who on coming to settle in the province, made their condition their own voluntary act) against the existence of any portion of the laws and institutions peculiar to the country, and any preponderance given to such persons in the Legislative and Executive Councils, in the courts of law, or in other departments, are contrary to the engagements of the British Parliament, and to the rights guaranteed to His Majesty's Canadian subjects, on the faith of the national honour of England, and on that of capitulations and treaties.

54. Resolved, That any combination, whether effected by means of Acts of the British Parliament, obtained in contravention to its former engagements, or by means of the partial and corrupt administration of the present constitution and system of law, would be a violation of those rights, and would, as long as it should exist, be obeyed by the people from motives of fear and constraint, and not from choice and affection; that the conduct of the Colonial Administrations and of their agents and instruments in this colony, has for the most part been of a nature unjustly to create apprehensions as to the views of the people and government of the mother country, and to endanger the confidence and content of the inhabitants of this province, which can only be secured by equal laws, and by the observance of equal justice, as the rule of conduct in all the departments of the Government.

55. Resolved, That whether the number of that class of His Majesty's subjects in this province, who are of British origin, be that mentioned in the said address of the Legislative Council, or whether (as the truth is) it amounts to less than half that number, the wishes and interests of the majority of them are common to them and to their fellow-subjects of French origin, and speaking the French language; that the one class love the country of their birth, the other that of their adoption; that the greater portion of the latter have acknowledged the generally beneficial tendency of the laws and institutions of the country, and have laboured, in concert with the former, to introduce into them gradually, and by the authority of the Provincial Parliament, the improvements of which they have, from time to time, appeared susceptible, and have resisted the confusion which it has been endeavoured to introduce into them in favour of schemes of monopoly and abuse, and that all without distinction wish anxiously for an impartial and protecting Government.

56. Resolved, That in addition to administrative and judicial abuses which have had an injurious effect upon the public welfare and confidence, attempts have been made, from time to time, to induce the Parliament of the United Kingdom, by deceiving its justice and abusing its benevolent intentions, to adopt measures calculated to bring about combinations of the nature above mentioned, and to pass Acts of internal legislation for this province, having the same

tendency, and with regard to which the people of the country had not been consulted; that, unhappily, the attempts to obtain the passing of some of these measures were successful, especially that of the Act of the 6 Geo. 4, c. 59, commonly called the "Tenures Act," the repeal of which was unanimously demanded by all classes of the people, without distinction, through their representatives, a very short time after the number of the latter was increased; and that this House has not yet been able to obtain from His Majesty's Representative in this province, or from any other source, any information as to the views of His Majesty's Government in England with regard to the repeal of the said Act.

57. Resolved, That the object [1] of the said Act was, according to the benevolent intentions of Parliament, and as the title of the Act sets forth, the extinction of feudal and seigniorial rights and dues on lands held *en fief* and *à cens* in this province, with the intention of favouring the great body of the inhabitants of the country, and protecting them against the said dues, which were regarded as burdensome; but that the provisions of the said Act, far from having the effect aforesaid, afford facilities to seigniors to become, in opposition to the interests of their *censitaires*, the absolute proprietors of the extensive tracts of unconceded lands which, by the law of the country, they held only for the benefit of the inhabitants thereof, to whom they were bound to concede them in consideration of certain limited dues; that the said Act, if generally acted upon, would shut out the mass of the permanent inhabitants of the country from the vacant lands in the seigniories, while at the same time they have been constantly prevented from settling on the waste lands of the Crown on easy and liberal terms, and under a tenure adapted to the laws of the country, by the partial, secret and vicious manner in which the Crown Land department has been managed, and by the provisions of the Act aforesaid, with regard to the laws applicable to the lands in question; and that the application made by certain seigniors for a change of tenure, under the authority of the said Act, appears to prove the correctness of the view which this House has taken of its practical effect.

58. Resolved, That it was only in consequence of an erroneous supposition that feudal charges were inherent in the law of this country, as far as the possession and transmission of real property and the tenures recognised by that law were concerned, that it was enacted in the said Act that the lands with regard to which a change of tenure should be effected, should thereafter be held under the tenure of free and common soccage; that the seigniorial charges have been found burdensome in certain cases, chiefly by reason of the want of adequate means of obtaining the interference of the Colonial Government and of the courts of law, to enforce the ancient law of the country in that behalf, and that the Provincial Legislature was, moreover, fully competent to pass laws providing for the redemption of the said charges in a manner which should be in accordance with the interests of all parties, and for the introduction of the free tenures recognised by the laws of the country; that the House of Assembly has been repeatedly occupied, and now is occupied about this important subject; but that the said Tenures Act, insufficient of itself to effect equitably the purpose for which it was passed, is of a nature to embarrass and create obstacles to the effectual measures which the legislature of the country, with a full knowledge of the subject, might be disposed to adopt; and that the application thus made (to the exclusion of the Provincial Legislature) to the Parliament of the United Kingdom, which was far less competent to make equitable enactments on a subject so complicated in its nature, could only have been made with a view to unlawful speculations and the subversion of the laws of the country.

59. Resolved, That, independently of its many other serious imperfections, the said Act does not appear to have been founded on a sufficient knowledge of the laws which govern persons and property in this country, when it declares the laws of Great Britain to be applicable to certain incidents to real property therein enumerated; and that it has only served to augment the confusion and doubt which had prevailed in the courts of law, and in private transactions with regard to the law which applied to lands previously granted in free and common soccage.

60. Resolved, That the provision of the said Act which has excited the greatest alarm, and which is most at variance with the rights of the people of the country, and with those of the Provincial Parliament, is that which enacts that lands previously held *en fief* or *en censive* shall, after a change of tenure shall have been

[1] Cf. Lucas, *Lord Durham's Report*, i, p. 161.

effected with regard to them, be held in free and common soccage, and thereby become subject to the laws of Great Britain, under the several circumstances therein mentioned and enumerated; that besides being insufficient in itself, this provision is of a nature to bring into collision, in the old settlements, at multiplied points of contiguity, two opposite systems of laws, one of which is entirely unknown to this country, in which it is impossible to carry it into effect; that from the feeling manifested by the colonial authorities and their partisans towards the inhabitants of the country, the latter have just reason to fear that the enactment in question is only the prelude to the final subversion, by Acts of Parliament of Great Britain, fraudulently obtained in violation of its former engagements, of the system of laws by which the persons and property of the people of this province were so long happily governed.

61. Resolved, That the inhabitants of this country have just reason to fear that the claims made to the property of the seminary of St. Sulpice, at Montreal, are attributable to the desire of the colonial administration, and its agents and tools, to hasten this deplorable state of things; and that His Majesty's Government in England would, by re-assuring His faithful subjects on this point, dissipate the alarm felt by the clergy, and by the whole people without distinction, and merit their sincere gratitude.

62. Resolved, That it is the duty of this House to persist in asking for the absolute repeal of the said Tenures Act, and until such repeal shall be effected, to propose to the other branches of the Provincial Parliament such measures as may be adapted to weaken the pernicious effects of the said Act.

63. Resolved, That this House has learned with regret, from one of the said despatches of the Colonial Secretary, that His Majesty has been advised to interfere in a matter which concerns the privileges of this House; that in the case there alluded to, this House exercised a privilege solemnly established by the House of Commons, before the principle on which it rests became the law of the land; that this privilege is essential to the independence of this House, and to the freedom of its votes and proceedings; that the resolutions passed by this House, on the 15th of February, 1831, are constitutional and well-founded, and are supported by the example of the Commons of Great Britain; that this House has repeatedly passed bills for giving effect to the said principle, but that these bills failed to become law, at first from the obstacles opposed to them in another branch of the Provincial Legislature, and subsequently by reason of the reservation of the last of the said bills for the signification of His Majesty's pleasure in England, whence it has not yet been sent back; that until some bill to the same effect shall become law, this House persists in the said resolutions; and that the refusal of his Excellency, the present Governor-in-chief, to sign a writ for the election of a knight representative for the county of Montreal, in the place of Dominique Mondelet,[1] esquire, whose seat had been declared vacant, is a grievance of which this House is entitled to obtain the redress, and one which would alone have sufficed to put an end to all intercourse between it and the Colonial Executive, if the circumstances of the country had not offered an infinite number of other abuses and grievances against which it is urgently necessary to remonstrate.

64. Resolved, That the claims which have for many years been set up by the Executive Government to that control over and power of appropriating a great portion of the revenues levied in this province, which belong of right to this House, are contrary to the rights and to the constitution of the country; and that with regard to the said claims, this House persists in the declarations it has heretofore made.

65. Resolved, That the said claims of the Executive have been vague and varying; that the documents relative to the said claims, and the accounts and estimates of expenses laid before this House, have likewise been varying and irregular, and insufficient to enable this House to proceed with a full understanding of the subject on the matters to which they related; that important heads of the public revenue of the Province, collected either under the provisions of the law or under arbitrary regulations, made by the Executive, have been omitted in the said accounts; that numerous items have been paid out of the public revenue without the authority of this House, or any acknowledgment of its control over them, as salaries for sinecure offices, which are not recognized

[1] For the history, see Christie, iii, pp. 448, 498. The dispatch referred to in this 'resolution' is in *Ibid.*, pp. 524 ff.

by this House, and even for other objects for which, after mature deliberation, it had not deemed it expedient to appropriate any portion of the public revenue; and that no accounts of the sums so expended have been laid before this House.

66. Resolved, That the Executive Government has endeavoured by means of the arbitrary regulations aforesaid, and particularly by the sale of the waste lands of the Crown, and of the timber on the same, to create for itself out of the revenue which this House only has the right of appropriating, resources independent of the control of the representatives of the people; and that the result has been a diminution of the wholesome influence which the people have constitutionally the right of exercising over the administrative branch of the Government, and over the spirit and tendency of its measures.

67. Resolved, That this House having, from time to time, with a view to proceed by bill, to restore regularity to the financial system of the province, and to provide, for the expenses of the administration of justice and of His Majesty's Civil Government therein, asked the Provincial Government by address for divers documents and accounts relating to financial matters, and to abuses connected with them, has met with repeated refusals, more especially during the present session and the preceding one; that divers subordinate public functionaries, summoned to appear before committees of this House to give information on the said subject, have refused to do so in pursuance of the said claim set up by the Provincial Administrations to withdraw a large portion of the public income and expenditure from the control and even from the knowledge of this House; that during the present session one of the said subordinate functionaries of the Executive being called upon to produce the originals of sundry registers of warrants and reports, which it was important to this House to cause to be examined, insisted on being present at the deliberations of the committee appointed by the House for that purpose; and that the head of the administration being informed of the fact, refrained from interfering, although in conformity to Parliamentary usage, this House had pledged itself that the said documents should be returned, and although the Governor-in-chief had himself promised communication of them.

68. Resolved, That the result of the secret and unlawful distribution of a large portion of the public revenue of the province has been, that the Executive Government has always, except with regard to appropriations for objects of a local nature, considered itself bound to account for the public money to the Lords Commissioners of the Treasury in England, and not to this House, nor according to its votes, or even in conformity to the laws passed by the Provincial Legislature; and that the accounts and statements laid before this House from time to time have never assumed the shape of a regular system of balanced accounts, but have been drawn up, one after another, with such alterations and irregularities as it pleased the administration of the day to introduce into them, from the accounts kept with the Lords of the Treasury, in which the whole public money received was included, as well as all the items of expenditure, whether authorized or unauthorized by the Provincial Legislature.

69. Resolved, That the pretensions and abuses aforesaid have taken away from this House even the shadow of control over the public revenue of the province, and have rendered it impossible for it to ascertain at any time the amount of revenue collected, the disposable amount of the same, and the sums required for the public service; and that the House having during many years passed bills, of which the models are to be found in the Statute-book of Great Britain, to establish a regular system of accountability and responsibility in the department connected with the receipt and expenditure of the revenue, these bills have failed in the Legislative Council.

70. Resolved, That since the last session of the Provincial Parliament, the Governor-in-chief of this Province, and the members of his Executive Government, relying on the pretensions above mentioned, have without any lawful authority paid large sums out of the public revenue, subject to the control of this House; and that the said sums were divided according to their pleasure, and even in contradiction to the votes of this House, as incorporated in the Supply Bill passed by it during the last session, and rejected by the Legislative Council.

71. Resolved, That this House will hold responsible for all monies which have been, or may hereafter be paid, otherwise than under the authority of an Act of the Legislature, or upon an address of this House, out of the public revenue

of the province, all those who may have authorized such payments, or participated therein, until the said sums shall have been reimbursed, or a bill or bills of indemnity freely passed by this House shall have become law.

72. Resolved, That the course adopted by this House in the Supply Bill, passed during the last session, of attaching certain conditions to certain votes, for the purpose of preventing the accumulation of incompatible offices in the same persons, and of obtaining the redress of certain abuses and grievances, is wise and constitutional, and has frequently been adopted by the House of Commons, under analogous circumstances; and that if the Commons of England do not now so frequently recur to it, it is because they have happily obtained the entire control of the revenue of the nation, and because the respect shown to their opinions with regard to the redress of grievances and abuses, by the other constituted authorities, has regulated the working of the constitution in a manner equally adapted to give stability to His Majesty's Government, and to protect the interests of the people.

73. Resolved, That it was anciently the practice of the House of Commons to withhold supplies until grievances were redressed; and that in following this course in the present conjuncture, we are warranted in our proceeding, as well by the most approved precedents, as by the spirit of the constitution itself.

74. Resolved, That if hereafter, when the redress of all grievances and abuses shall have been effected, this House should deem it fit and expedient to grant supplies, it ought not to do so otherwise than in the manner mentioned in its fifth and sixth resolution of the 16 March, 1833, and by appropriating by its votes in an especial manner, and in the order in which they are enumerated in the said resolutions, the full amount of those heads of revenue, to the right of appropriating which claims have been set up by the Executive Government.

75. Resolved, That the number of the inhabitants of the country being about 600,000, those of French origin are about 525,000, and those of British or other origin 75,000; and that the establishment of the civil government of Lower Canada for the year 1832, according to the yearly returns made by the Provincial Administration, for the information of the British Parliament, contained the names of 157 officers and others receiving salaries, who are apparently of British or foreign origin, and the names of 47 who are apparently natives of the country, of French origin: that this statement does not exhibit the whole disproportion which exists in the distribution of the public money and power, the latter class being for the most part appointed to the inferior and less lucrative offices, and most frequently only obtaining even these by becoming the dependents of those who hold the higher and more lucrative offices; that the accumulation of many of the best paid and most influential, and at the same time incompatible offices, in the same person, which is forbidden by the laws and by sound policy, exists especially for the benefit of the former class; and that two-thirds of the persons included in the last commission of the peace issued in the province are apparently of British or foreign origin, and one-third only of French origin.

76. Resolved, That this partial and abusive practice of bestowing the great majority of official places in the province on those only who are least connected with its permanent interests, and with the mass of its inhabitants, has been most especially remarkable in the judicial department, the judges for the three great districts having, with the exception of one only in each, been systematically chosen from that class of persons, who, being born out of the country, are the least versed in its laws, and in the language and usages of the majority of its inhabitants; that the result of their intermeddling in the politics of the country, of their connexion with the Members of the Colonial Administration, and of their prejudices in favour of institutions foreign to and at variance with those of the country, is that the majority of the said judges have introduced great irregularity into the general system of our jurisprudence, by neglecting to ground their decisions on its recognized principles; and that the claim laid by the said judges to the power of regulating the forms of legal proceedings in a manner contrary to the laws, and without the interference of the legislature, has frequently been extended to the fundamental rules of the law and of practice; and that in consequence of the same system, the administration of the criminal law is partial and uncertain, and such as to afford but little protection to the subject, and has failed to inspire that confidence which ought to be its inseparable companion.

77. Resolved, That in consequence of their connexion with the members of the Provincial Administrations, and of their antipathy to the country, some

of the said judges have, in violation of the laws, attempted to abolish the use in the courts of law of the language spoken by the majority of the inhabitants of the country, which is necessary to the free action of the laws, and forms a portion of the usages guaranteed to them in the most solemn manner by the law of nations and by statutes of the British Parliament.

78. Resolved, That some of the said judges, through partiality for political purposes, and in violation of the criminal law of England as established in this country, of their duty and of their oath, have connived with divers law officers of the Crown, acting in the interest of the Provincial Administration, to allow the latter to engross and monopolize all criminal prosecutions of what nature soever, without allowing the private prosecutor to intervene or be heard, or any advocate to express his opinion as *amicus curiae*, when the Crown officers opposed it; that in consequence of this, numerous prosecutions of a political nature have been brought in the courts of law by the Crown officers against those whose opinions were unfavourable to the Administration for the time being; while it was impossible for the very numerous class of His Majesty's subjects to which the latter belonged to commence with the slightest confidence any prosecution against those who, being protected by the Administration, and having countenanced its acts of violence, had been guilty of crimes or misdemeanors; that the tribunals aforesaid have, as far as the persons composing them are concerned, undergone no modification whatever, and inspire the same fears for the future.

79. Resolved, That this House, as representing the people of this province, possesses of right, and has exercised within this province when occasion has required it, all the powers, privileges and immunities claimed and possessed by the Commons House of Parliament in the kingdom of Great Britain and Ireland.

80. Resolved, That it is one of the undoubted privileges of this House to send for all persons, papers and records, and to command the attendance of all persons, civil or military, resident within the province, as witnesses in all investigations which this House may deem it expedient to institute; and to require such witnesses to produce all papers and records in their keeping, whenever it shall deem it conducive to the public good to do so.

81. Resolved, That as the grand inquest of the province, it is the duty of this House to inquire concerning all grievances, and all circumstances which may endanger the general welfare of the inhabitants of the province, or be of a nature to excite alarm in them with regard to their lives, their liberty, and their property, to the end that such representations may be made to our Most Gracious Sovereign, or such legislative measures introduced, as may lead to the redress of such grievances, or tend to allay such alarm; and that far from having a right to impede the exercise of these rights and privileges, the Governor-in-chief is deputed by his Sovereign, is invested with great powers, and receives a large salary, as much for defending the rights of the subject and facilitating the exercise of the privileges of this House, and of all constituted bodies, as for maintaining the prerogatives of the Crown.

82. Resolved, That since the commencement of the present session, a great number of petitions relating to the infinite variety of objects connected with the public welfare, have been presented to this House, and many messages and important communications received by it, both from His Majesty's Government in England and from His Majesty's Provincial Government; that many bills have been introduced in this House, and many important inquiries ordered by it, in several of which the Governor-in-chief is personally and deeply implicated; that the said petitions from our constituents, the people of all parts of this province; the said communications from His Majesty's Government in England and from the Provincial Government; the said bills already introduced or in preparation; the said inquiries commenced and intended to be diligently prosecuted, may and must necessitate the presence of numerous witnesses, the production of numerous papers, the employment of numerous clerks, messengers and assistants, and much printing, and lead to inevitable and daily disbursements, forming the contingent expenses of this House.

83. Resolved, That from the year 1792 to the present, advances had constantly been made to meet these expenses, on addresses similar to that presented this year by this House to the Governor-in-chief, according to the practice adopted by the House of Commons; that an address of this kind is the most solemn vote of credit which this House can pass, and that almost the whole amount of a sum

exceeding £277,000 has been advanced on such votes by the predecessors of his Excellency the Governor-in-chief, and by himself (as he acknowledges by his message [1] of the 18th January, 1834), without any risk having ever been incurred by any other governor on account of any such advance, although several of them have had differences, attended by violence and injustice on *their* part, with the House of Assembly, and without their apprehending that the then next Parliament would not be disposed to make good the engagements of the House of Assembly for the time being; and that this refusal of the Governor-in-chief, in the present instance, essentially impedes the despatch of the business for which the Parliament was called together, is derogatory to the rights and honour of this House, and forms another grievance for which the present administration of this province is responsible.

84. Resolved, That besides the grievances and abuses before mentioned, there exist in this province a great number of others (a part of which existed before the commencement of the present administration, which has maintained them, and is the author of a portion of them), with regard to which this House reserves to itself the right of complaining and demanding reparation, and the number of which is too great to allow of their being enumerated here: that this House points out, as among that number,

1stly. The vicious composition and the irresponsibility of the Executive Council, the members of which are at the same time judges of the Court of Appeals, and the secrecy with which not only the functions, but even the names of the members of that body have been kept from the knowledge of this House, when inquiries have been instituted by it on the subject.

2dly. The exorbitant fees illegally exacted in certain of the public offices, and in others connected with the judicial department, under regulations made by the Executive Council, by the judges, and by other functionaries usurping the powers of the legislature.

3dly. The practice of illegally calling upon the judges, to give their opinions secretly on questions which may be afterwards publicly and contradictorily argued before them; and the opinions themselves so given by the said judges, as political partizans, in opposition to the laws, but in favour of the administration for the time being.

4thly. The cumulation of public places and offices in the same persons, and the efforts made by a number of families connected with the administration, to perpetuate this state of things for their own advantage, and for the sake of domineering for ever, with interested views and in the spirit of party, over the people and their representatives.

5thly.[2] The intermeddling of members of the Legislative Councils in the election of the representatives of the people, for the purpose of influencing and controlling them by force, and the selection frequently made of returning officers for the purpose of securing the same partial and corrupt ends; the interference of the present Governor-in-chief himself in the said elections; his approval of the intermeddling of the said legislative councillors in the said elections; the partiality with which he intervened in the judicial proceedings connected with the said elections, for the purpose of influencing the said proceedings, in a manner favourable to the military power and contrary to the independence of the judicial power; and the applause which, as commander of the forces, he bestowed upon the sanguinary execution of the citizens by the soldiery.

6thly. The interference of the armed military force at such elections, through which three peaceable citizens, whose exertions were necessary to the support of their families, and who were strangers to the agitation of the election, were shot dead in the streets; the applause bestowed by the Governor-in-chief and Commander of the Forces on the authors of this sanguinary military execution (who had not been acquitted by a petty jury) for the firmness and discipline displayed by them on that occasion.

7thly. The various faulty and partial systems which have been followed ever since the passing of the Constitutional Act, with regard to the management of the waste lands in this province, and have rendered it impossible for the great majority of the people of the country to settle on the said lands; the fraudulent and illegal manner in which, contrary to His Majesty's instructions, Governors, Legislative and Executive Councillors, Judges and subordinate officers have appropriated to themselves large tracts of the said lands; the monopoly of an

[1] See Christie, iii, p. 531.

[2] For the history, see Christie, iii, ch. xxxii ff.

extensive portion of the said lands in the hands of speculators residing in England, with which the province is now threatened; and the alarm generally felt therein with regard to the alleged participation of His Majesty's Government in this scheme, without its having deigned to re-assure his faithful subjects on this head, or to reply to the humble address to His Majesty adopted by this House during the last session.

8thly. The increase of the expenses of the Government without the authority of the Legislature, and the disproportion of the salaries paid to public functionaries for the services performed by them, to the rent of real property, and to the ordinary income commanded by the exertions of persons possessing talent, industry and economy equal to, or greater than those of the said functionaries.

9thly. The want of all recourse in the courts of law on the part of those who have just and legal claims on the Government.

10thly. The too frequent reservation of bills for the signification of His Majesty's pleasure, and the neglect of the Colonial-office to consider such bills, a great number of which have never been sent back to the province, and some of which have even been returned so late that doubts may be entertained as to the validity of the sanction given to them; a circumstance which has introduced irregularity and uncertainty into the legislation of the province, and is felt by this House as an impediment to the re-introduction of the bills reserved during the then preceding session.

11thly. The neglect on the part of the Colonial-office to give any answer to certain addresses transmitted by this House on important subjects; the practice followed by the administration of communicating in an incomplete manner, and by extracts, and frequently without giving their dates, the despatches received from time to time on subjects which have engaged the attention of this House; and the too frequent references to the opinion of His Majesty's Ministers in England, on the part of the provincial administration, upon points which it is in their power and within their province to decide.

12thly. The unjust retention of the college at Quebec, which forms part of the estates of the late Order of Jesuits, and which from a college has been transformed into a barrack for soldiers; the renewal of the lease of a considerable portion of the same estates, by the provincial executive, in favour of a member of the Legislative Council, since those estates were returned to the Legislature, and in opposition to the prayer of this House, and to the known wishes of a great number of His Majesty's subjects to obtain lands there, and to settle them; and the refusal of the said executive to communicate the said lease, and other information on the subject, to this House.

13thly. The obstacles unjustly opposed by the executive, friendly to abuses and to ignorance, to the establishment of colleges endowed by virtuous and disinterested men, for the purpose of meeting the growing desires of the people for the careful education of their children.

14thly. The refusal of justice with regard to the accusations brought by this House, in the name of the people, against judges, for flagrant acts of malversation, and for ignorance and violation of the law.

15thly. The refusals on the part of the governors, and more especially of the present Governor-in-chief, to communicate to this House the information asked for by it, from time to time, and which it had a right to obtain, on a great number of subjects connected with the public business of the province.

16thly. The refusal of His Majesty's Government to reimburse to the province the amount for which the late Receiver-general was a defaulter, and its neglect to enforce the recourse which the province was entitled to against the property and person of the late Receiver-general.

85. Resolved, That the facts mentioned in the foregoing resolutions, demonstrate that the laws and constitutions of the province have not, at any period, been administered in a manner more contrary to the interests of His Majesty's Government, and to the rights of the people of this province, than under the present administration, and render it necessary that his Excellency Matthew Lord Aylmer, of Balrath, the present Governor-in-chief of this province, be formally accused by this House, of having, while acting as Governor, in contradiction to the wishes of the Imperial Parliament, and to the instructions he may have received, and against the honour and dignity of the Crown, and the rights and privileges of this House and the people whom it represents, so recomposed the Legislative Council as to augment the dissensions which rend this

colony; of having seriously impeded the labours of this House, acting as the grand inquest of the country; of having disposed of the public revenue of the province, against the consent of the Representatives of the people, and in violation of the law and constitution; of having maintained existing abuses, and created new ones; of having refused to sign a writ for the election of a representative to fill a vacancy which had happened in this House, and to complete the number of representatives established by law for this province; and that this House expects from the honour, patriotism and justice of the reformed Parliament of the United Kingdom, that the Commons of the said Parliament will bring impeachments, and will support such impeachments before the House of Lords against the said Matthew Lord Aylmer, for his illegal, unjust and unconstitutional administration of the government of this province; and against such of the wicked and perverse advisers who have misled him, as this House may hereafter accuse, if there be no means of obtaining justice against them in the province, or at the hands of His Majesty's Executive Government in England.

86. Resolved, That this House hopes and believes, that the independent members of both Houses of the Parliament of the United Kingdom will be disposed, both from inclination and from a sense of duty, to support the accusations brought by this House, to watch over the preservation of its rights and privileges which have been so frequently and violently attacked, more especially by the present administration; and so to act, that the people of this province may not be forced by oppression to regret their dependence on the British Empire, and to seek elsewhere a remedy for their afflictions.

87. Resolved, That this House learned, with gratitude, that Daniel O'Connell, Esq., had given notice in the House of Commons in July last, that during the present Session of the Imperial Parliament, he would call its attention to the necessity of reforming the Legislative and Executive Councils in the two Canadas; and that the interest thus shown for our own fate by him whom the gratitude and blessings of his countrymen have, with the applause of the whole civilized world, proclaimed Great and Liberator, and of whom our fellow-countrymen entertain corresponding sentiments, keeps alive in us the hope that through the goodness of our cause and the services of such a friend, the British Parliament will not permit a minister, deceived by the interested representations of the provincial administration and its creatures and tools, to exert (as there is reason from his despatches to apprehend that he may attempt to do,) the highest degree of oppression, in favour of a system which in better times he characterized as faulty, and against subjects of His Majesty who are apparently only known to him by the great patience with which they have waited in vain for promised reforms.

88. Resolved, That this House has the same confidence in Joseph Hume, Esq., and feels the same gratitude for the anxiety which he has repeatedly shown for the good government of these colonies, and the amelioration of their laws and constitutions, and calls upon the said Daniel O'Connell and Joseph Hume, Esqrs., whose constant devotedness was, even under a tory ministry, and before the reform of Parliament, partially successful in the emancipation of Ireland, from the same bondage and the same political inferiority with which the communications received from the Colonial Secretary during the present session menace the people of Lower Canada, to use their efforts that the laws and constitution of this province may be amended in the manner demanded by the people thereof; that the abuses and grievances of which the latter have to complain may be fully and entirely redressed; and that the laws and constitution may be hereafter administered in a manner consonant with justice, with the honour of the Crown and of the people of England, and with the rights, liberties and privileges of the people of this province, and of this House by which they are represented.

89. Resolved, That this House invites the members of the minority of the Legislative Council who partake the opinions of the people, the present members of the House of Assembly, until the next general election, and afterwards all the members then elected, and such other persons as they may associate with them, to form one committee or two committees of correspondence, to sit at Quebec and Montreal in the first instance, and afterwards at such place as they shall think proper; the said committees to communicate with each other, and with the several local committees which may be formed in different parts of the province, and to enter into correspondence with the Hon. Denis Benjamin

Viger, the agent of this province in England, with the said Daniel O'Connell and Joseph Hume, Esqrs., and with such other members of the House of Lords or of the House of Commons, and such other persons in the United Kingdom of Great Britain and Ireland, as they may deem expedient, for the purpose of supporting the claims of the people of this province and of this House; of furnishing such information, documents and opinions as they may think adapted to make known the state, wishes and wants of the province; the said committees also to correspond with such persons as they shall think proper in the other British colonies, which are all interested, that the most populous of their sister colonies do not sink under the violent attempt to perpetuate the abuses and evils which result as well from the vices of its constitution as from the combined malversation of the administrative, legislative and judicial departments, out of which have sprung insult and oppression for the people, and, by a necessary consequence, hatred and contempt on their part for the provincial government.

90. Resolved, That the Honourable Denis Benjamin Viger be requested to remain at the seat of His Majesty's Government, at least during the present session of the Imperial Parliament, to continue to watch over the interests of the province with the same zeal and the same devotedness as heretofore, without suffering himself to be discouraged by mere formal objections on the part of those who are unwilling to listen to the complaints of the country.

91. Resolved, That the fair and reasonable expenses of the said two Committees of Correspondence, incurred by them in the performance of the duties entrusted to them by this House, are a debt which it contracts towards them; and that the representatives of the people are bound in honour to use all constitutional means to reimburse such expenses to the said Committee, or to such persons as may advance money to them for the purposes above mentioned.

92. Resolved, That the message from his Excellency the Governor-in-chief, received on the 13th of January last, and relating to the writ of election for the county of Montreal, with the extract from a despatch which accompanied it, the message from the same, received the same day, and relating to the Supply Bill, and the message from the same, received on the 14th January last, with the extract from a despatch which accompanied it, be expunged from the journals of this House.[1]

## LXXXIV

### THE CONSTITUTIONAL ASSOCIATION OF QUEBEC (1834), and the objects for which it has been formed.

[Trans.: Christie, *op. cit.* vol. iv.]

* * * * * *

The object of the Constitutional Association of Quebec will be,—

By constitutional means,—

1st. To obtain for persons of British and Irish origin, and others His Majesty's subjects laboring under the same privation of common rights a fair and reasonable proportion of the representation in the Provincial Assembly.

2nd. To obtain such reform in the system of judicature and the administration of justice as may adapt them to the present state of the Province.

3rd. To obtain such a composition of the Executive Council as may impart to it the efficiency and weight which it ought to possess.

4th. To resist any appointment of members of the Legislative Council otherwise than by the Crown, but subject to such regulations as may ensure the appointment of fit persons.

5th. To use every effort to maintain the connexion of this colony with the parent state, and a just subordination to its authority.

6th. To assist in preserving and maintaining peace and good order throughout the Province, and ensuring the equal rights of His Majesty's subjects of all classes.

Now WE, whose names are undersigned, taking the premises into our serious consideration, do hereby form ourselves into a Constitutional Association for the purposes stated in the foregoing declaration, and for mutual support in the discharge of the duties of our allegiance to His Majesty, as lawful Sovereign of

[1] For the message of January 13, see Christie, iii, p. 524; for that of January 14, see No. LXXXII.

the United Kingdom of Great Britain and Ireland, and of this Province, dependent on and belonging to the said Kingdom.

Declaring that we wish for no preferences or advantages over our fellow-subjects of whatever national origin, nor for any infringement of the rights, laws, institutions, privileges and immunities, civil or religious in which those of French origin may be peculiarly interested, and to which they are entitled, or which they enjoy under the British government and the established constitution; desiring merely for ourselves the enjoyment of equal rights with our fellow-subjects, and that permanent peace, security and freedom for our persons, opinions, property and industry which are the common rights of British subjects.

And in furtherance of the purposes aforesaid, to the utmost of our power, we hereby pledge ourselves to each other and to our fellow-subjects throughout the Empire.

## LXXXV

## AN ADDRESS BY THE CONSTITUTIONALISTS OF MONTREAL TO MEN OF BRITISH OR IRISH ORIGIN, 1834

[Trans.: Christie, *op. cit.*]

Fellow Countrymen,

Engaged in a contest, the result of which must be felt throughout the Provinces of British America, we, your oppressed brethren of Montreal, solicit your attention to a brief and temperate exposition of our principles and grievances.

Connected with you by identity of origin, by community of feeling, by national recollections, and by one common interest, in this the hour of danger we look to you for support.

The population of Lower Canada, heterogeneous in its character, comprehends two distinct classes—a majority of French, and a minority of British descent—governed by feelings and attachments widely differing from each other; the causes which have produced that division may be generally known.

The want of education among the French majority, and their consequent inability to form a correct judgment of the acts of their political leaders, have engendered most of our grievances. The extent of that ignorance may be collected from the facts, that within the last few years in each of two Grand Juries of the Court of King's Bench for the district of Montreal, selected under a provincial law, from among the wealthiest inhabitants of the rural parishes, there was found but one person competent to write his name; and that trustees of schools are specially permitted, by statute, to affix their crosses to their school reports.

The political information of that part of the Canadian population engaged in agricultural pursuits is therefore derived exclusively from the few educated individuals scattered among them, who speak the same language, and who possess the means of directing public opinion, exempted from those salutary checks which education alone can bestow.

The persons who wield this mighty power are, generally speaking, seigniors, lawyers and notaries, of French extraction, all of whom as will be shown hereafter, have a direct and selfish interest in maintaining a system of feudal law, injurious to the country, and bearing with peculiar severity on British interests.

Our endeavours to procure relief have been represented as an overt attack upon the customs and institutions of the Province; national prejudices have been called into action, national feelings excited, and a French majority, ignorant of the nature of the contest, is now arrayed against a British minority.

Passing by the petty vexations of the feudal tenure, such as the seignior's right to call for the title deeds of every vassal; his exclusive right of grinding the grain of his seigniory; his right to assume any property within the limits of his seigniory, on reimbursing to the purchaser the cost of his acquisition; and other claims of a servile and arbitrary character incident to feudal law; we proceed to the subject of the more grievous burdens by which we are oppressed.

Throughout the seigniories of Lower Canada, within the limits of which are comprised the cities of Montreal and Quebec, upon the sale of real property the feudal Lord extracts from the purchaser a fine, equal to one-twelfth part of the price—a claim which recurs with each successive sale; thus every person who clears, or otherwise improves a farm, erects a building either in town or country,

or invests capital in landed estate, bestows one-twelfth of his outlay on the seignior, whenever the property is brought to sale.

This odious law, so injurious in its effects, readily explains why this fine Province, although richly endowed by nature, is so far surpassed in the career of improvement by neighboring Provinces and States.

From the want of a bill for the registration of acquisition of real property, the validity of a title cannot be ascertained except by a course of expensive proceedings through Courts of Law, but secret incumbrances may still exist, unaffected by that procedure, for whose discovery no means are afforded; hence the difficulty of borrowing money on mortgage, and the frequent seizure and forced sale of real estate.

The profits which accrue to the seignior from this state of things are obvious; and the interest of the French lawyer and notary in maintaining a system of law that fosters litigation and produces corresponding expense is equally intelligible.

Such are the considerations which govern a party exercising a paramount influence in the House of Assembly: and thus it is that British liberality which conferred upon the French population the elements of free government has been perverted by designing and interested individuals to the means of retaining laws adverse to national prosperity and to the spirit of free institutions.

The repugnance of Britons to a slavish and antiquated system of feudal jurisprudence has drawn upon them the undisguised hostility of the French party; an hostility which has been manifested by attempts even of a legislative character to check emigration from the British Isles, and to prevent a permanent settlement in the Province of that class of His Majesty's subjects, whom they have invidiously described as of "British or Foreign origin."

The most prominent of these enactments, and the most unjust, is the imposition of a tax on British emigrants, and British emigrants only, in violation of the most sacred rights we inherit from our fathers, and contrary to the best interests of the Province.

They have denounced, as a mischievous monopoly, a Land Company, established for the purpose of settling, with a British population, lands which, by their distance from a market and want of roads, would otherwise be inaccessible to individual enterprise; wilfully overlooking the fact, that the immense tracts of land still held by the Crown, and offered for sale, in small parcels, at low rates, secure the advantages of competition, and will prevent the Company from using the privileges to the detriment of the community.

In the formation of counties for the election of representatives, the townships, which are held by the tenure of free and common soccage, and are therefore the natural resort of British settlers, have been divided into counties, according to the actual population, without making any provision for their future growth, although the territory thus parcelled out is of much larger extent than the French seigniories; so that were the respective sections of the Province peopled in proportion of their productive powers, a majority of British constituents would return a minority of representatives.

They have excluded co-tenants and co-proprietors from the elective franchise, as being generally Britons, whilst to co-heirs, as being chiefly French, the right of voting has been carefully secured.

The qualification of magistrates, of militia officers and of jurors, is made to depend upon real estate; the possession of which, in properties of limited value, is generally confined to Canadians, whilst Britons, whose capitals are more commonly embarked in commercial and manufacturing pursuits, are virtually debarred from those offices and public trusts; thus confining our liberties to the discretion of a body of men, the greater number of whom are devoid of education, and have been taught to regard Britons as their natural enemies.

Their abuse of power and contempt of enlightened public opinion, (confident in the support of an unlettered French majority,) are exemplified by their proceedings in the House of Assembly. We have seen Mr. Christie [1] expelled from successive Parliaments, despite the remonstrances of the disfranchised electors of Gaspé, and contrary to every principle of a representative government—Mr. Mondelet expelled by a forced construction of an illegal resolution, a construction, from which the framer of the resolution declared his dissent; and contrary

[1] Christie gives a full account of his expulsion, etc., in his *History*. For the Mondelet case and the Montreal riot, see No. LXXXIII, Sections 63 and 84.

to the precedent in the case of Mr. Panet who under like circumstances, was permitted to retain his seat—The West Ward of Montreal, containing a majority of independent British electors, disfranchised for two years—a pretended enquiry into the melancholy riot of the 21st of May, 1832, where individuals were pronounced guilty before the examination of a single witness; and where, in violation of a solemn pledge, and of common justice, the evidence for the prosecution was sent forth to the world without any evidence having been received in defence—public monies misapplied under resolutions of the Assembly, without the assent of the co-ordinate branches of the legislature –the contingent expenses of the Assembly charged with a salary to Mr. Viger, originally of £1000, but gradually increased to £1700 per annum—a sum so disproportionate to the services rendered, as to justify the conclusion, that the vote itself was a convenient pretext for the secret misapplication of Provincial funds and, their daring contempt of all public and constitutional principles during the last session, and on the eve of a dissolution, in attempting to commit a new Parliament to the reimbursement of the expenses attendant upon the convening of public meetings throughout the Province, avowedly for the purpose of influencing the general election.

The laws governing commercial transactions introduced from France, remain as they were at the conquest. Applications to the Assembly for a bankrupt law, and other modifications of the existing jurisprudence, suited to the altered circumstances of the country, have been uniformly neglected, and we continue subjected to the uncertain and ill defined provisions of a body of laws long since repudiated in that France, whence it was originally derived.

The provincial banks called into existence by acts of the Provincial Legislature, and by the terms of their charters, compelled annually to exhibit statements of their affairs, have been openly denounced by Mr. Papineau, late Speaker of the Assembly, and organ of the French party, from no other possible motive than a desire to inflict injury upon commerce, and consequently on Britons, by whom the commerce of the country is chiefly conducted.

The same individual has publicly recommended to the French party to abstain from all intercourse with Britons: an advice which has been acted upon to a considerable extent.

Not satisfied with the powers with which they are constitutionally invested, the French party in the Assembly have been incessantly occupied in attempting to arrogate to themselves supremacy in the concerns of the Province.

Their refusal to pass laws, except of temporary duration, has involved in uncertainty important interests which would require to be regulated by permanent enactments.

Their claim to pass in review the salaries of all public officers by an annual Civil List, voted by items, would, if acceded to, lead to a disorganization of government, and ultimately render the Judges and other public functionaries, the instruments of their political animosities.

The Legislative Council, a body appointed by the Crown, and where alone British interests are fairly represented, they are endeavouring to replace by an elective Council, which, returned by the same constituency, must, from necessity, be in all respects a counterpart of the Assembly; a measure which would remove the barriers that defend us against French tyranny, and give to a majority, hostile to British interests, a power that would be employed to sever the connexion between Canada and the Empire.

Our opposition to this extension of the elective principle, dictated by preservation, has been falsely represented as an opposition to liberal institutions. Accustomed to see in the neighboring States the mild toleration of equal laws, and a constitution in its essential features approximating to our own, we are not of those who startle with alarm at the name of a republic, or view their institutions with jealousy or distrust. With sentiments of generous pride, we recognise the lineaments of kindred blood and national character. Sensible of the benefits derived from our connexion with the parent state, and ardently attached to the land of our fathers, we view with grief and indignation, proceedings, which, if not successfully resisted, will leave us no choice between a change which we deprecate, and a submission to French oppression.

It were an insult to the understanding to dwell upon public opinion, as expressed by a population destitute of the advantages of education, as a mass of the French population in this Province has been shewn to be, and we regard with blended feelings of indignation and contempt, the affectation of the leaders of

the French party, of the character of liberals and reformers, whilst they have sedulously fostered a system of feudal exactions and feudal servitude, which invest a privileged class with more arbitrary rights than the nobility of England, without the plea of hereditary claims to legislative honors.

Numbering in our ranks many who, both in Britain and in Ireland, were foremost in the cause of reform; independent in our principles; unconnected with office; of all classes and of all creeds; bound together by the endearing recollection of a common origin, and the powerful sentiment of a common danger, we are prepared to resist to the uttermost the efforts of a party, which, under the specious guise of popular institutions, would sever wisdom from power, and respect from intelligence, and consign us to unendurable bondage.

Cherishing sentiments of becoming respect for His Majesty's government, and correctly appreciating its many efforts to advance our prosperity, the task we have undertaken to perform requires, nevertheless, that we should explicitly declare our opinion, that the evils which oppress us have been aggravated by the various and temporising policy of successive administrations.

The destinies of this important Province have been confided to Colonial Secretaries, ignorant of the state of parties in the Colony. Entering upon office without a competent knowledge of our affairs; relying for information upon a House of Assembly, constituted as that body has been shewn to be; alternately making unwise concessions or attempting to enforce unwise principles, and not unfrequently retiring from office at a time when experience would have enabled them to act with becoming judgment and decision, the tendency of their measures has been to compromise the dignity of the Home Government and to confer a sanction upon the pretensions by which our interests are assailed.

We are not insensible to the just grounds of complaint arising from the inefficiency of the Executive Council, and the feeble claims which that body possesses to the confidence of the community.

We cannot recognize just principles of government in calling to a seat in one of the Councils, a clerk or subordinate officer of the other; and although the Legislative Council, as at present constituted, commands our respect as possessing a majority of independent members, we consider that it yet contains too many persons holding dependent situations under the Crown and liable to be acted upon by undue influence.

The accumulation of offices in the family and connection of a leading member of the Legislative Council, deserves to be held up to public reprehension.

The irresponsible manner in which the Land Granting Department is conducted, the salary disproportioned to the duties performed, which is attached to the office, and other abuses connected with the Woods and Forests, demand revision.

To the redress of these abuses, and to all other reforms, based upon just principles, we offer the most strenuous support, and we, deliberately and with confidence submit this exposition of our principles and grievances, in order that our fellow-countrymen may be enabled to judge of the sincerity of the respective parties in the Province, by contrasting professions with facts.

The subject of this address cannot fail to suggest important reflections connected with the social and political relations of the country. Of what the future will disclose we can offer no conjecture. Recent events have roused us to a sense of impending danger, and the British and Irish population of Lower Canada are now united for self-preservation, animated by a determination to resist measures, which, if successful must end in their destruction. Shall we, in this, the country of our adoption, be permitted to find a home? or shall we be driven from it as fugitives?

Strong in the sympathies of our fellow countrymen in the Sister Provinces, injury cannot be inflicted upon us, without affecting them; and the French party may yet be taught, that the majority upon which they count for success, will, in the hour of trial, prove a weak defence against the awakened energies of an insulted and oppressed people.

By order of the Committee appointed at a public meeting of the inhabitants of Montreal, held on the 20th of November, 1834.

(Signed) John Molson, Jun.

## LXXXVI

## THE SEVENTH REPORT ON GRIEVANCES, 1835

[Trans.: *Reports on Grievances, House of Assembly, Upper Canada,* Toronto, 1835.]

*To the Honorable the Commons House of Assembly.*

The Select Committee on Grievances, to whom were referred the Despatch of Lord Viscount Goderich, His Majesty's Principal Secretary of State for the Colonies, of date the 8th of November, 1832, with the Message of His Excellency the Lieutenant Governor, and several letters, petitions, and other Documents which had been addressed by William Lyon Mackenzie, Esquire, to the Secretary of State, accompanying the same—the Message of His Excellency the Lieutenant Governor in reply to the address of the House of Assembly for information concerning the dismissal and re-appointment to office of Mr. Solicitor General Hagerman, the appointment of Mr. Jameson as Att'y General in the room of Mr. Boulton, and relative to the expulsion of the said William Lyon Mackenzie from the House of Assembly in a former Parliament—and certain other messages, petitions and documents on various subjects of grievance and public and private wrong—have, in obedience to the orders of the House, made some enquiry on the several subjects referred to them, and agreed to the following Report:

In 1828, a Select Committee of the House of Commons [1] enquired into the causes of those embarrassments and discontents which had for many years prevailed in the Canadas. This Committee conclude their report by stating their anxiety "to record their complete conviction that neither the suggestions they "have presumed to make, nor any other improvement in the Laws and Con- "stitutions of the Canadas, will be attended with the desired effect, unless an "impartial, conciliatory and constitutional system of government be observed "in these loyal and important Colonies."

Last summer another Committee of the House of Commons entered upon an investigation of the causes of Canadian discontents, but confined their enquiries to the Lower Province, the Right Honorable E. G. Stanley having under great misapprehension assured the House that the utmost harmony prevailed between the Lieutenant Governor and the Council and Assembly of this Colony.

Your Committee respectfully submit the results of their enquiry, together with the evidence. If it shall appear to the House that there is just cause of complaint, and that the government has not exerted its Constitutional powers to remedy the evils from which the people desire relief, the course to be pursued is to address the Throne, stating their grievances and praying redress. If, on the other hand, the House shall be of opinion that the government is administered impartially, with sound discretion and a single eye to the general welfare; that its officers and ministers enjoy the public confidence and worthily discharge their various duties, there can be no doubt but that the Representatives of the people will mark their approbation of their conduct by cheerfully placing in their hands the small Annual Grant, which in name, more than reality, indicates a popular influence in the government.

The almost unlimited extent of the patronage of the Crown, or rather of the Colonial Minister for the time being and his advisers here, together with the abuse of that patronage, are the chief sources of Colonial discontent. Such is the patronage of the Colonial Office that the granting or withholding of supplies is of no political importance unless as an indication of the opinion of the country concerning the character of the government, which is conducted upon a system that admits its officers to take and apply the funds of the Colonists without any legislative vote whatever.

Some years ago the people of the County of York held a meeting and petitioned for the redress of Grievances; their memorial was transmitted by W. W. Baldwin, Esq. the Chairman of the meeting, to the Right Honorable E. G. Stanley, and his advice requested as to the means of redress, which he most willingly gave. His autograph letter in reply, from which the following is an extract, is appended to Dr. Baldwin's evidence given before Your Committee.

[1] See No. LXXVI.

(Extract.)

"Upon the subject of the Legislative Council, which I do not hesitate to say, "(without any disrespect to or reflection upon the individuals who compose it "is at the root of all the evils complained of in both Provinces). Upon the ex- "clusion of the Judges, with the single exception of the Chief Justice, from all "interference in political business—and upon the necessity of introducing some "alteration into the present Jury system—the three most important points of "your petition, you will find that the opinion of the Committee entirely concurs "with yours, and that opinion I am disposed to support to the utmost of my "power."

Mr. Stanley adds that the Constitutional remedy is "open to the people of "addressing for the removal of the advisors of the Crown, and refusing supplies."

The patronage of the Crown, as now exercised in this Province, includes the payments of gifts, salaries, pensions, and retired allowances to the Clergy of the Methodist, Presbyterian, Protestant Episcopal & Roman Catholic orders, and to nearly the whole of the civil officers of the government, including Sheriffs, Collectors of Excise and Customs Revenue, Coroners, Justices of the Peace, Commissioners of the Court of Requests, the heads of the several departments and all in subordinate stations under them; to Judges of the District and Surrogate Courts, Registrars of Conveyances, Wills, &c., Commissioners of Customs, Clerks of the Peace, &c. &c. These officers hold their several situations only during the pleasure of the Crown. The Royal patronage also embraces the judicial establishment, many pensions, the nomination of one branch of the Legislature, by the name of the Legislative Council, and the appointment of its speaker and other officers,—the selection of the officers of the House of Assembly—the control of the Indian Department, of King's College, and of Upper Canada College, the appointment of the twelve District Boards of Education, and the direction of the expenditure of public monies in aid of Emigration—the selection of the Executive Council—the uncontrolled management of millions of Acres of public Lands—the appointment of 1500 commissioned Militia Officers —the sole control of the Military and Naval Forces—and (subject to the votes of the House of Commons in this case) the regulation of the whole Military and Naval expenditure.

The Crown also controls the expenditure of a large annual amount of local taxation by its power of appointing the District Magistracy during its pleasure—the justices thus appointed select the District Treasurers and a large number of subordinate officers, and exercise varied and extensive civil and criminal jurisdiction. The refusal of the bench of Magistrates of the Eastern District during the present Session, to render to the House an account of the receipt and expenditure of the local taxes and revenues raised from the people, and entrusted to the charge of these functionaries, under the authority of several acts of the Legislature, affords another proof that the system under which they are appointed requires instant revision; more especially as the complaints of the people of that District against magisterial peculation, as recorded on the journals, are of long standing.

The Crown appoints the members of the Court of King's Bench, and the Judges of that Court regulate at their discretion the tariff of fees to be paid therein by suitors. These judges are dependent on the Crown for such retiring pensions as it may see fit to award them, if any, and enabled to look forward with hope and expectation to the enjoyment of other offices and situations within its gift, by themselves and their families.

The Canada Company,[1] the several incorporated establishments for Banking, Canalling and other purposes, and the Harbour, Dock & Wharf Companies, in nearly all cases, unite their patronage with that of the local government, and steadily strive to increase the influence of the Crown.

The Post Office Department,[2] with about a hundred Deputy Post Masters, is under the sole control of the Crown—contracts are made, and all appointments held during its pleasure; the surplus revenue is transmitted to England. No detailed accounts of receipts and expenditure, have ever been laid before the Colonial Legislature. The rates of letter postage between the different places in

[1] This company was formed in 1824 to purchase and settle the crown and clergy reserves of Upper Canada (see Gordon, R. K., *John Galt*, University of Toronto Studies, 1920).

[2] Consult Smith, William, *A History of the Post-Office in British North America* (Cambridge, 1920).

the Colony, between this Colony & others—and between Upper Canada and England, are very extravagant. The correspondence with Europe is chiefly carried on via: New York, which is at once the cheapest and most expeditious route.

Representations were made to the British Government that the Post Office system required revision, and a law was passed in consequence to authorise the several Colonies to establish Post Offices. The form of a law, such as the government would approve, is before the House, but its provisions are so inapplicable and absurd that no benefit would be derived from their enactment. A change for the better must be that which will give the Colonists the entire control of this Department in Upper Canada.

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*Audit of the Public Accounts.*

The present system is altogether inefficient for ensuring the application of the revenue to the purposes for which it is intended to be applied. The House of Assembly, acting by one or more of its committees in a session, cannot examine the accounts and vouchers of the several public accountants, owing to the very complex, obscure and unsatisfactory manner in which they are furnished; and as for the Executive Council, the law recognizes them not as auditors of the revenue, nor do they merit the public confidence as a board of audit.

Of the grant for the roads in 1833, paid about a year ago, nearly £12,000 entrusted to Commissioners remain yet unaccounted for.

The grants to Canals, many thousand pounds in amount, are in general very imperfectly accounted for.

The payments of Casual and Territorial Revenue, fines, forfeitures and seizures, are also very imperfectly accounted for, either to the country, or to the Crown or its ministers.

The remedy would be a Board of Audit, the proceedings of which to be regulated by a well considered statute under a responsible government; such a Board might save the country many thousands each year, but it is difficult to believe that any efficient means of auditing the whole provincial revenue can be provided by Legislative enactment, while the Legislative Council is constituted as at present.

*Returns of Accounts, &c.*

Many items of information required by the House and its Committees from the Government with respect to the public accounts, the receipt and expenditure of public monies, college and other funds, monies placed in the hands of individuals for the payment of clergymen or the building of churches and chapels, &c. have as yet been withheld, and the receipts and expenditure of the post-office department have been very unnecessarily delayed. In most cases the parties whose duty it was to compile these returns have had ample time to do so. In many other cases the statements required have been furnished to the house. The remedy for neglecting to supply returns in most cases, would be by a statute providing the time and manner of making them, and naming the officers who should render them to the Legislature; but it is well known that such an enactment would fail in the Council, which has an interest in preventing the enforcement of practical accountability to the people.

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*The Despatch of 8th Nov.* 1832.

The Despatch from Lord Viscount Goderich to Sir John Colborne, dated November 8th, 1832, and specially referred to your Committee, is an answer to the representations of about 24,500 of His Majesty's subjects of this Province, transmitted to England by Mr. Mackenzie, a member of this Committee and the agent deputed by the Petitioners to urge their claims on the consideration of Government. There is an error in the Despatch, which states the number of Petitioners by Mr. Mackenzie at 8 or 10,000, below the true number, a subsequent letter to Mr. M. from the Colonial Office, appended to this report, corrects that mistake.

Mr. Mackenzie also went to England as the Agent of about 10,000 Petitioners

of the several religious denominations, whose claims Mr. George Ryerson [1] was sent home to advocate in 1830.

The documents referred to your Committee are very voluminous, instead, therefore, of reporting them, some extracts have been made to which the Despatch has reference; These selections and other correspondence with the Colonial Office are appended to this report.

The Despatch itself recommends many very valuable measures that His Majesty had been graciously pleased to suggest to the Government of this Province, and which are eminently calculated, if acted upon, to render the people more happy and contented, viz:—

1. The passing of a Bill for the amendment of the Election laws.
2. The alteration of the Charter of King's College, in such a manner as shall agree with the wishes of the people—(acted on this year by the Assembly.)
3. The placing the Town Members of the Assembly on the same footing in respect to wages as the County Members—(acted on this year.)
4. Allowing all the members of religious denominations, who cannot conscientiously take an oath, the privilege of the elective franchise—(acted on.)
5. The interdiction of the disposal of Crown Lands to favourites, and rendering them the subject of competition—(partly acted on.)
6. The repeal of the law which excludes British subjects from voting at elections and being elected, until the expiration of seven years after their return from their residence in a foreign country—(acted on by the Legislature.)
7. The non-interference of all persons holding official situations in the Province at elections.
8. The strong recommendation of His Majesty for a universal diffusion of Education, especially among the poorest and most destitute—(acted on by the House of Assembly this year.)
9. The desire expressed, that the most ample and particular information should be given to the House of Assembly of the avails and diposition (*sic*) of the Casual and Territorial revenue.
10. The disposition expressed by His Majesty that the Ministers of religion should resign their seats in the Councils, and that no undue preference should be given to the preachers of the Church of England—(to this recommendation, the Address of the Council hereto appended, was the answer.)
11. The reducing the costs of Elections.
12. The passing of a Bill for the independence of Judges—and
13. The passing of a Bill limiting the number of persons holding offices to seats in the House of Assembly.

Mr. Mackenzie, in his efforts made in England for the attainment of a redress of grievances, was generously assisted by Mr. Hume, (who has always taken an active part on behalf of the people of Canada), and by Messrs. Warburton, Ellice, O'Connell, Grote and Roebuck, Mr. Viger, Lord Howick and other Gentlemen of liberal principles.

Among other subjects of complaint embraced in the Petitions referred to your Committee, were the neglect of general Education—the delays, costs and partialities exhibited in the administration of Justice—defective Jury laws—inconvenient polling places at county Elections—an imperfect state of the representation in the House of Assembly—the Primogeniture laws—the Crown and Clergy Reserves, and the large Provincial debt.

Upon these and other matters of Grievance, your Committee have taken the evidence of individuals of various religious and political creeds which they herewith submit to the consideration of the House.

### *The Legislative Council.*

This body forms a part of the patronage of the British Government; they are the nominees of the Minister of the colonies, who can add to their numbers at his discretion. In continually rejecting the many valuable measures earnestly prayed for by the people, they may be fairly presumed to act in obedience to the power from whence their appointments were derived. Your committee examined some of the members of the council holding offices of emolument under

[1] Rev. George Ryerson brother of Egerton Ryerson. For his visits to England see Ryerson, E., *The Story of my Life*, pp. 83, 107 (Toronto, 1883).

the government, and from their answers it will readily be seen whether they are or are not under the influence of the Lieutenant Governors for the time being.

Capital may be brought into any country, but under an arbitrary, imprudent, and irresponsible government it will be impossible to retain a large share of it. Notwithstanding the encouragement given to emigration, as stated in Mr. Robinson's accounts; it appears by No. 5 of the Appendix, that the population of the colony has not increased much beyond the natural rate in an agricultural settlement of great extent, fertile soil, and spare population. The emigration at Quebec in these four years, as also at New York, has been very extensive. The more wealthy class of emigrants pass through Canada to the United States.

*Justices of the Peace.*

These officers are appointed by the Lieutenant Governor alone, during his pleasure. Their powers severally and collectively are very extensive. By a reference to the returns appended to this report it will be seen that they consist chiefly of persons of a particular bias in politics, and are a means of extending the power and influence of the colonial system.

Several witnesses were examined as to the mode of appointing Justices of the Peace, the character of the Magistracy, &c. Their evidence and returns of the present magistrates of the colony are submitted herewith.

*A Responsible Government.*

The Governors of colonies, like other men, are individually liable to all the infirmities of human nature, and in their political capacity, when left to act without restraint, they, no doubt, sacrifice occasionally the interests and happiness of the people, to the gratification of their own passions and caprices. One great excellence of the English constitution consists in the limits it imposes on the will of a King, by requiring responsible men to give effect to it. In Upper Canada no such responsibility can exist. The Lieutenant Governor and the British Ministry hold in their hands the whole patronage of the Province; they hold the sole dominion of the country, and leave the representative branch of the Legislature powerless and dependent.

Mr. Elmsley, a member of the Legislative Council, (the son of a late Chief Justice of the Province,) and formerly member of the Executive Council, retired from that body lately, and advertised in the newspapers that he could not retain his seat and act independently at the board. The Archdeacon of York, Mr. Markland, and Mr. P. Robinson, three of the present members of the Executive Council, have given a different testimony before Your Committee. Mr. Stanley, in his letter already adverted to, expresses his opinion of the Executive Council with great candour and frankness, as follows:

"I do, however, think that something might be done with great advantage, "to give a really responsible character to the Executive Council, which at "present is a perfectly anomalous body, hardly recognized by the Constitution, "and effective chiefly as a source of patronage."

In the Royal Instructions to Governor Sir Thomas Cochrane,[1] dated the 27th of July, 1832, signed by Viscount Goderich, and printed by order of the House of Commons, your committee find the following passage:

"In accordance with the uniform course of precedents, your Commission con- "stitutes a Council which will participate with the Assembly in the enactment "of laws. It is not, however, to be denied that this part of the established "system of Colonial Legislation has been practically found to be attended with "some serious difficulties. The members of Council, deriving their authority "from the Royal Commission, have not seldom been regarded with suspicion and "distrust by the great body of the people. Their elevation in rank and authority "has but too often failed to induce a corresponding degree of public respect. "Even the most judicious exercise of their powers has occasionally worn the "resemblance of harshness when opposed to the unanimous or the predominant "opinions of those to whom the Colonists looked with confidence as their repre- "sentatives. The Councils, it must be confessed, have not uniformly exerted "themselves to repel, or to abate, this prejudice. The acrimony engendered by "such disputes has sometimes given occasion to an eager assertion of extreme "rights on the part of the Council, and to a no less determined denial of their

[1] Governor of Newfoundland, 1825–34.

"necessary and constitutional privileges on the part of the Assembly. The "Councils have also been employed as instruments for relieving Governors from "the responsibility they ought to have borne for the rejection of measures which "have been proposed by the other branch of the Legislature, and have not "seldom involved them in dissensions which it would have been more judicious "to decline. The effect of the institution therefore, is too often to induce a colli- "sion between the different branches of the Legislature, to exempt the Governor "from a due sense of responsibility, and to deprive the representative body of "some of its most useful members. Yet the compensation which might atone "for these evils is not obtained, and the Council does not assume in the colony "a position or an influence analagous to that of the House of Peers, because "entirely destitute of that hold on public opinion which the property and "independence of its members, as well as the authority of the institution itself, "confers upon the Peerage of this country."

In Upper Canada, where society doubles its numbers every twelve years, (while in Lower Canada it does so every twenty years) where new towns and counties start every year into existence, acting more on government than acted upon by its directions, obliging it to abandon schemes of improvement begun in one direction because population has by chance suddenly accumulated in another—requiring new laws and tribunals every Legislative Session—coming from several counties and bringing hither their peculiar affections, feelings, and prejudices—in such a country the government ought to follow incessantly the changes that work on public opinion—it should be cheap—because population and capital spreading constantly in the wilderness, there is no great accumulation of capital in a few hands, though there is a rapid one in the country; the people are above want but cannot indulge in luxury and ostentation—their display will therefore ever make highly salaried officers disliked by the community at large.

In Upper Canada the efforts of the Legislature have been directed towards improving the Executive Council. Yet it appears on enquiry that that body affects to have done neither good nor harm—some of its individual members may, (as is asserted by Bishop Macdonell) have acquired influence near the Lieutenant Governors and misled them, but the body has few if any definite attributes, other than in the Land Granting Department, and there nothing but ministerial acts to perform. It is shewn in evidence, by Colonel Rowan and others, that the Lieutenant Governor may or may not shew the Executive Council his despatches, and may or may not ask their advice, and may or may not follow that advice after having asked it, except there be an instruction from Europe to the contrary. They are occasionally called on to report on special matters for the information of the government at home, which is often seriously and intentionally misled by them.

In the appointment to offices, and concerning the accepting or rejecting Legislative Bills, it does not appear that they have ever been consulted. Their power in the Land Granting Department has been done away in this Province by the appointment of Mr. Peter Robinson, and in Lower Canada by that of Mr. Felton, with whom the respective Governors (alone) are supposed to consult and determine on all applications for land. The Canada Land Company monopoly too, necessarily, renders applications for grants to the government less frequent. It appears to Your Committee that the Executive Council is a nondescript with which it is folly further to contend.

There have been three classes of persons examined before Your Committee—the first, of whom the Venerable Dr. Strachan is one, are of opinion that the Government is well enough as it is, and that as to responsibility it is as responsible as other Governments.

The second class desire a responsible Ministry, some heads of departments well paid, to direct the government, to prepare bills and most of the business of the session, and to hold office or lose it according as they may happen to be in the minority or majority in the House of Assembly. This system was never attempted in any of the old colonies, but Your Committee have asked many questions with a view of ascertaining what is the public opinion concerning its practicability here; and it appears that Mr. Mackenzie, in his letters to Lord Goderich, expressed a belief that with some modifications it might be productive of a greater share of good government and public prosperity than is at present enjoyed by the people.

A third class contend for elective institutions, and affirm that while Governors

come from without, and Judges are commissioned from without, favoritism towards their connexions will prevail to an extent that would destroy the influence of any set of "Ministers," constituted upon the principle desired by the second class; that the influence of Downing Street will continue to prevail as hitherto; and that the favourites of the Secretary of State will, as at present, be placed in important offices to the exclusion of better qualified men.

The facts connected with the cases of Mr. Jameson, Mr. Boulton, and Mr. Hagerman; the dismissal of the Crown Lawyers by one Colonial Minister, and the unexplained re-appointment of one of them to his former office, and of the other to the highest judicial situation in Newfoundland, a short time after, by another; the assertion by Colonel Rowan, to Mr. Boulton, on the authority of the Lieutenant Governor, that the cause of his and his colleague's summary dismissal, was the part they had taken in the House of Assembly to promote the repeated expulsions of Mr. Mackenzie, after they were (it was presumed) made acquainted with the opinion of the Home Government on that course of proceeding; and the prompt and ready refusal of His Excellency to inform the House, in answer to its Address, of the reasons which had induced the Colonial Department to pursue the course it did in these matters, (although even Sir Peregrine Maitland has admitted in his despatches to Mr. Stanley on the Falls Outrage, that it had become the usage in the colonies, unreservedly to submit such correspondence to the Colonial Assemblies,)—these circumstances clearly prove that there is no responsibility to public opinion in Upper Canada, and it may be inferred from His Excellency's reply that he has instructions from England to withhold from the Legislature the official correspondence of the Colonial Department concerning their affairs.

The cause of the removal of the Crown Officers can only be learnt by Your Committee from the Despatch of Lord Goderich, who expressly says it was done because they opposed the avowed policy of His Majesty's Government; the truth of which charge is abundantly notorious; nor does His Lordship seem at all to notice the personal indignity they had offered to himself even as a Minister of the crown. It is difficult to imagine on what ground His Excellency Sir John Colborne qualified the language of the Colonial Minister, and limited it to the case of Mr. Mackenzie's expulsion, unless it was to furnish the excuse which Mr. Boulton is known to have offered, that the views of His Majesty's Government had never been communicated to him as they had been to Mr. Solicitor General. But although His Excellency has given this limited view without any known authority, yet we have heard Mr. Solicitor General publicly declare that his removal had not the remotest connexion with Mr. Mackenzie's expulsions and pretended disqualification by the late Provincial Parliament. The declaration therefore of His Excellency on the one hand, and of Mr. Solicitor General Hagerman on the other, are in direct contradiction; and His Majesty's government at Home can alone tell where the truth lies. It appears probable they were dismissed for opposing the views of His Majesty's Government, not only in the expulsions of Mr. Mackenzie but also from their treatment of Lord Goderich and of His Despatch, embracing a variety of matters of general interest and policy, and that they have since been restored upon irreconcilable representations and excuses the nature of which this system of concealment prevents our ascertaining.

The unexplained reappointment to office of the Crown Officers, Messrs. Boulton and Hagerman, men whose conduct and character were always particularly obnoxious to the people, created great dissatisfaction and distrust in the colony.

* * * * * *

The class of persons who are in favor of elective institutions contend, that they were found to work well in the old North American colonies while in a colonial state, that the people of Upper Canada are entitled to the enjoyment of institutions equally free with those enjoyed by the old colonists during the time they were colonial, and under British protection—that few politicians are now found contending that these continental colonies, capable of containing large population, will for a long series of years be required to submit to the inconveniences resulting from perpetual interference by the Home Government in their internal concerns. That in the House of Assembly many useful bills are proposed and carried for many successive sessions which are continually thrown out in the Legislative Council; of which the return moved for in the House of Commons by Mr. Hume and appended hereto gives particulars up to

the year 1832—that it is the wisdom of the aristocracy to try to make the people fearful of themselves, by raising idle cries about loyalty, republicanism, jacobinism, and revolution—that birth, office, or peculiar privileges ought not to give to a few superiority over the many—that the legislative council neglect and despise the wishes of the country on many important matters which a council elected by the freeholders would not—that the people, if united in claiming their privileges to constitute the second branch of the legislature, would obtain it, and that it is weakness and wavering among their representatives which alone can make them timid, as to claiming the enlargement of their liberties—that the prejudices of early education, borrowed from books written by or under the authority of pensioners and salaried lawyers who have with one voice endeavoured to lull the people into the very erroneous belief that the union of church and state and the wisdom of former ages in devising great privileges for the peerage are the cause of the greatness of England, while in truth it is owing to what she has saved of popular institutions—that elective institutions are the only safeguards to prevent the Canadas from forming disadvantageous comparisons between the condition of the colonists and the adjoining country—and that the crown of England, by its ministers, exercised no patronage in Connecticut and Rhode Island; none in the other New England States, save the appointment of a Governor; none in the proprietary governments; and that hence there is no disloyalty in freely and calmly discussing which of these modes of government that have been granted to British subjects and countries will best suit Canada.

When Sir John Colborne assumed the government of this province, in his reply to the address of the legislative council in answer to his speech at the opening of the session, he expressed to them his opinion of the deficiency of independence in that loyal body. His Excellency's communications with the Colonial Department convey the same sentiment.

The following is an extract of a despatch from His Excellency Sir John Colborne to Secretary Sir George Murray, dated York, Upper Canada, 16th February, 1829.

"With respect to the constitution of the executive and legislative councils, "on which subject you require information, it is evident, that whatever persons "may be appointed members of the executive council, there will be a considerable "degree of jealousy existing in this limited community of their influence and "authority; they must necessarily reside at York, and will seldom be able to "accept the charge without holding other offices under the crown. On many "accounts it is very desirable that the Chief Justice should retain his seat in "the executive council; but there can be no doubt that occasionally he must, as "a judge, be led too deeply into the political affairs of the colony.

"Composed as the legislative council is at present, the province has a right "to complain of the great influence of the executive government in it. The "legislative council consists of seventeen members, exclusive of the Bishop of "Quebec; of those, from accidental causes, not more than fifteen ever attend to "their legislative duties. Thus, out of the number generally present, six are "of the executive council, and four hold offices under the government; I have "therefore intimated my intention of recommending to His Majesty's govern-"ment to increase the legislative council.

"It is exceedingly difficult to find persons qualified for it; but if about eight "or ten more can be selected from different parts of the province, and the "majority be considered independent, there can be no good reason assigned for "excluding the executive council."

In the return to the house of commons, from which the above extract was taken, it is noted that "Since the date of the despatch, the Right Reverend Dr. "Macdonell, Roman catholic bishop, and John Elmsley, Esquire, two additional "members have been added to the legislative council." Of these the first named has a pension or allowance during the pleasure of the colonial department, and the last left the executive council, declaring that an independent minded man could not be there.

The dependence of the legislative council is strikingly manifested by the facts stated in the evidence of the Honorable Colonel Clark, and the Honorable William Dickson, members of that body, before a select committee of the house of assembly during a late parliament. It appears that several legislative councillors had objected to a measure strongly urged by the executive, and its failure was inevitable. To ensure its passing, coercive means were adopted, and those members

who were dependent on the government, were told either to vote directly contrary to the opinions they had thus publicly expressed, or be dismissed from their offices. After this disgraceful attempt to coerce men to disingenuous and inconsistent conduct, those unacquainted with the threats which had been used were astonished at the sudden, unexpected, and unexplained change in the conduct of several members; and when this surprise was expressed to the late Honorable James Baby, (who was also an executive councillor, and the senior member) he shed tears at his humiliation, and only exclaimed "my children!" "my children!" and the late Honorable Chief Justice Powell replied to a similar enquiry of surprise, "I have received a new light within the last ten minutes."

It also appears that the last named gentleman was on another occasion obliged to have a protest he had entered on the journals erased, and the erasure can be seen. The protest of Chief Justice Powell was against a school bill, passed the House of Assembly, then uninformed of its hearing, under the ambiguous phraseology of which it was intended to give Dr. Strachan £300 a year. The bill passed, and Dr. Strachan for many years received this sinecure salary, till it was done away with on the address of the House of Assembly.

We have already adverted to the circumstances of the Chief Justice being introduced into the Legislative Council, of which he is Speaker; and altho' the House of Assembly have repeatedly pointed out to His Majesty's Government, the inexpediency, in a limited community like this, of blending the judicial and political duties together, yet the same injurious system is continued. Its impropriety has been lately manifested by the result of a pecuniary negociation likely seriously to impair the independence of the judiciary and increase the distrust of the people.

The House of Assembly voted £200 a year to the Speaker of the Legislative Council, being the same as is allowed the Speaker of the Assembly, whose duties, as we have already stated, are far more arduous and laborious—but since the acts making the judges independent and providing for them, even undue salaries, a negociation has been carried on which has ended in giving a further £200 a year out of the Casual and Territorial Revenue to the Chief Justice of the King's Bench.

As long as these pecuniary inducements and bonuses can be held out to those occupying the judiciary we cannot consider it practically in a better or safer condition than it used to be: and Your Committee would suggest the propriety of addressing His Majesty's Government on the subject of thus exercising undue influence on the judiciary or even countenancing negociations derogatory from its presumed independence and purity, which ought to be above suspicion. This additional salary ought to be disallowed.

It appears therefore that the Legislative Council, as at present constituted, has utterly failed, and never can be made to answer the ends for which it was created; and the restoration of legislative harmony and good government requires its re-construction on the elective principle.

The opinions of Mr. Fox, Mr. Stanley, Earl Grey, Lord Erskine, Mr. Ellice, Mr. Hume, Sir James Mackintosh, Mr. O'Connell, Mr. Warburton, and many other eminent British Statesmen, have been expressed in favour of elective institutions as the most suitable for the Canadas; and it appears to Your Committee that Mr. Stanley correctly describes the Legislative Council as being "at the root of all the evils complained of in both Provinces."

The affairs of this country have been ever against the spirit of the constitutional act, subjected in the most injurious manner to the interferences and interdictions of a succession of Colonial ministers in England who have never visited the country, and can never possibly become acquainted with the state of parties, or the conduct of public functionaries, except through official channels in the province which are ill calculated to convey the information necessary to disclose official delinquencies and correct public abuses. A painful experience has proved how impracticable it is for such a succession of strangers beneficially to direct and control the affairs of the people 4000 miles off; and being an impracticable system, felt to be intolerable by those for whose good it was professedly intended, it ought to be abolished, and the domestic institutions of the province so improved and administered by the local authorities as to render the people happy and contented.

Such appears to have been the constitutional liberty conferred upon us by the 31st Geo. 3rd ch. 31,[1] by which the British legislature enables us to preserve

[1] No. LIV.

"the peace, welfare, and good government of the province," reserving to His Majesty, as head of the empire, the power of disallowing any colonial act incompatible with national treaties, with the rights of any other colonies, or with the commercial or general interests of the empire. Such a system of government, securing to the people inestimable blessings, would rather durably enlarge than impair the commercial relations with the parent state, in exchange for which we receive protection; and could in no wise prejudicially affect any benefits now yielded to her, except the loss, if loss it can be called, of that patronage the partial and impolitic distribution of which has ever proved unsatisfactory and injurious to the colony.'

It appears to your Committee that it is more important than legislation, rendered fruitless as it is by the Legislative Council, to adopt such measures as are likely to ensure such an alteration in the system of our public affairs as seems indispensable for the peace, welfare, and good government of this important part of His Majesty's dominions. The history of all colonies shew that there has been too much inattention in the British government in the selection of Governors, it being considered a matter merely of patronage with the colonial minister, in Downing Street. Men from the too long possession of lucrative power, whatever at first might be their relative stations soon acquire a community of interests, and thus identified in the purpose of sustaining each other in office, they have in this province made common cause against that redress of our grievances, and that economy of the public wealth, which are equally dictated by justice and wisdom.

Although the members of the Executive Council seem from their own account to render no benefit to the country, receiving however a salary from it, yet a very different duty is imposed upon them by the 31st Geo. 3rd, chap. 31, called the constitutional act, from which it appears they are appointed expressly to advise His Excellency upon the affairs of the Province. This they have never done satisfactorily. As far back as the first Session of the 10th Provincial Parliament, the House of Assembly expressed their dissatisfaction to His Excellency Sir John Colborne in the most constitutional mode of doing so, at the opening of the Session of the Legislature; and in the following year the same sentiments were again frankly conveyed to His Excellency in the answer to His Speech from the Throne, by a solemn declaration that the Executive had long and deservedly lost the confidence of the country. In the hope of their just and constitutional wishes being attended to, the people patiently waited for relief, but the relaxation of their vigilance which some remaining confidence in His Excellency unhappily produced has only served to bring disappointment, and to afford a farther opportunity for the accumulation of the abuses which pervade all our institutions.

The growing condition of this part of the Empire, in population, wealth and commerce, requires there should be an entire confidence between the Executive and the Commons House of Assembly; and this confidence cannot exist while those who have long and deservedly lost the esteem of the country are continued in the public offices and councils. Under such a state of things, distrust is unavoidable, however much it is to be deplored as incompatible with the satisfactory discharge of the public business.

When, in the year 1831, His Majesty was graciously pleased to suggest a further provision for the civil list, which the Colonial Minister required to be made either for seven years or for the life of His Majesty, the terms of the proposition were not candidly submitted to the Assembly, and notwithstanding the strenuous exertions of those who desired to make no provision at variance with the spirit of our constitution, the executive influence in the Assembly succeeded in carrying a measure for a permanent and extravagant supply, popularly called "the everlasting Salary Bill," while the liberal and gracious terms proposed by His Majesty on the subject were concealed and known only to those who feeling themselves to be above responsibility consummated a measure which has spread universal dissatisfaction and distrust. If this undue and impolitic concealment was practised from any pretended apprehension that a just provision would not be made for His Majesty's Government by His Faithful Commons, there is nothing in the history of the country to justify it, and as it encroached upon the constitutional privileges of the Legislature, there is no language of censure too strong against it.

It is not this act alone of which we complain, though it may serve to illustrate

our condition, but the whole system has so long continued virtually in the same hands, that it is little better than a family compact. Abuses have grown up so as to be interwoven with every thing; and these abuses are concealed, or palliated, excused and sustained by those who are interested to uphold them as the means of retaining office for their private, and not for the public, good.

Hence it happens that the most gracious intentions emanating from His Majesty's government at home are frustrated by an interested opposition in the colony; an opposition which seldom reaches the knowledge of His Majesty's Ministers in England, although felt most injuriously by the people. It did indeed lately come to His Majesty's knowledge from the unprecedented conduct of the whole executive and official departments towards His Majesty, when they received, during the late Parliament, the plainest and kindest manifestations of His Majesty's justice and liberality, conveyed in the most gracious manner through the Despatch of Lord Viscount Goderich, now Earl of Ripon; which illustrious statesman His Majesty had wisely placed at the head of Colonial affairs. This highly important document, connected with Mr. Mackenzie's negotiations in England, containing His Majesty's pleasure upon many important subjects, and making many valuable concessions to the wants and wishes of the people, was publicly treated in our Provincial Parliament, by men in office, with an indignity as ungrateful as it was unbecoming, and they even attempted by their votes, happily outnumbered, to suppress the despatch by returning it to His Excellency who was directed by the Earl of Ripon to make it public. On the 24th day of January, 1833, in the House of Assembly, it was moved in amendment to a motion for printing the despatch and documents, (in accordance with the wishes and instructions of the noble Earl,) that it be

"Resolved, that it is expedient to address His Excellency the Lieutenant "Governor, thanking him for His Message of Saturday last, and assuring him "that this House is duly sensible of His Excellency's anxiety to communicate "whatever information he may consider important to the welfare of the Province, "and informing His Excellency, that this House, for the reasons set forth in "the foregoing resolutions, is unwilling to place on its Journals the documents "sent down by His Excellency; and requesting him to allow this House TO "RETURN THE DESPATCH OF LORD GODERICH, and the accompanying "documents to His Excellency."

The House divided on this amendment, and the Yeas and Nays were taken as follows:

YEAS.

| | | |
|---|---|---|
| Att'y Gen. (Boulton) | A. Fraser, | Shade, |
| Berczy, | D. Macdonald, | Solicitor General, |
| Brown, | McMartin, | (Hagerman,) |
| Burwell, | McNeilledge, | Thomson, |
| Crooks, | Morris, | John Willson, |
| Elliott, | Robinson, | William Wilson—17. |

NAYS.

| | | |
|---|---|---|
| Bidwell, | Howard, | Perry, |
| Buell, | Jarvis, | Randal, |
| Campbell, | Ketchum, | Roblin, |
| Chisholm, | Lewis, | Samson, |
| Clark, | Lyon, | Shaver, |
| Cook, | A. Macdonald, | Vankoughnet, |
| Duncombe, | Norton, | White—22. |
| Hornor, | | |

From this it appears, that the two Crown officers, and other public officers, were in a minority of five in an attempt to send The Despatch of Lord Goderich back to his Excellency. The same conduct was pursued by them upon all the divisions upon that question, as will be seen by a reference to the Journals of that date.

The Crown Lawyers and other officers had directed their objections both against the despatch and the documents which accompanied it; nor was Lord Goderich personally spared. All the members of the present Executive Council joined in an unanimous vote in a similar expression of censure against this

communication of His Majesty's pleasure. Nevertheless they still continue in the service of His Majesty over his Canadian people, who have on various occasions utterly renounced and disclaimed these indecorous and impolitic proceedings. Thus was exhibited in the Provincial Legislature the political phenomenon of men repelling in an insulting manner the gracious concessions of their Sovereign and presumptuously interposing between him and his people as an insurmountable barrier to his royal benefactions.

On another occasion, the same disregard of the views of His Majesty's Government was openly practised by the repeated expulsions of one of the members for the County of York; and altho' the latter expulsions were effected against the case of Mr. Wilkes in the British House of Commons, against the well established law of the land, and against the well known judgment of His Majesty's Government, officially communicated by a Despatch to His Excellency, and by His Excellency communicated to Mr. Solicitor General Hagerman; yet in this open and unconstitutional invasion were found the Law Officers and various persons favoured with His Majesty's confidence, by holding offices of honor and trust during pleasure. And on a late occasion when the present Parliament voted the above proceedings, by a vote of 28 to 7, to be expunged from the Journals as subversive of the liberties of the whole body of electors of the Province, Mr. Hagerman was found, with others, in the minority against their obliteration, altho' the only retribution that could be made to the injured constituency of the country. We, by all means, concede the undoubted right of the members of both branches of the Legislature to vote independently as they please, but we deny the expediency of allowing the justice and executive duties of His Majesty to flow through such unworthy channels, and thereby weaken the confidence of the people in the sincerity of His Majesty's Government.

His Majesty's Government, after much consideration, procured the passing of a law in Lower Canada, for the purpose of raising a fund for the relief of destitute emigrants; after which, all the Executive functionaries in this Province were active in getting up addresses at public meetings against the measure as impolitic and unconstitutional. And while His Majesty was anxious to preserve harmony between Upper and Lower Canada, the same public characters agitated questions and measures, (such as the annexation of Montreal to Upper Canada,) which threatened the dismemberment of the sister Province against her consent, and to engender between the two Colonies ruinous animosities.

This is a state of things which, the British nation, it is presumed, cannot desire to perpetuate against us. After the right was conceded to the present United States, at the close of the Revolution, to form a constitution for themselves, the loyalists took refuge in this Province; and, by an act passed in 31st year of Geo. 3. they received the charter of their liberties, conferring upon them a constitution for their peace, welfare, and good government. His Excellency, Governor Simcoe, was entrusted with the duty of putting it into operation, and in the first speech delivered by him from the throne, he made the following memorable declaration:—"I have summoned you together under the authority "of an Act of the Parliament of Great Britain, passed last year, which has "established the British Constitution, and all the forms which secure and main-"tain it, in this distant colony." And upon closing the same session he said "I particularly recommend to you to explain that this Province is singularly "blest, not with a mutilated constitution; but with a constitution which has "stood the test of experience, and is the very image and transcript of that of "Great Britain."

It is reasonable for the people to desire to see these declarations from the throne, recorded on our Journals, faithfully observed by those in the confidence of His Majesty, and that these institutions may be made such as will secure to them their civil and religious liberties to their just extent. This country is now principally inhabited by loyalists and their descendants, and by an accession of population from the mother country, where is now enjoyed the principles of a free and responsible government; and we feel the practical enjoyment of the same system in this part of the empire to be equally our right; without which it is in vain to assume that we do or can possess in reality or in effect "the very image and transcript of the British Constitution."

The House of Assembly has, at all times, made satisfactory provision for the civil government, out of the revenues raised from the people by taxation, and while there is cherished an unimpaired and continued disposition to do so,

it is a reasonable request that His Majesty's adviser in the province and those about him should possess and be entitled to the confidence of the people and their representatives, and that all their reasonable wishes respecting their domestic institutions and affairs should be attended to and complied with.

Your Committee would respectfully recommend that, besides the usual number for the Journals, a large edition of this report, with the evidence and other appended documents, should be printed in a portable form, as early as possible, and distributed among the members of the House, for general circulation throughout the colony.—And, as the affairs of the Canadas will probably occupy a large share of the attention of the Imperial Parliament during its present session, it might perhaps be advisable to transmit to London a certain number of copies for distribution among those members of the Legislature who take an active interest in Canadian affairs.

W. L. Mackenzie,
Chairman,
T. D. Morrison,
David Gibson,
Charles Waters,

*Committee Room, House of Assembly,*
10th April 1835.

## LXXXVII

## GLENELG TO GOSFORD[1]

[Trans.: *Imperial Blue Books Relating to Canada*, 1836, Vol. vi.]

Copy of a Despatch from Lord Glenelg to the Earl of Gosford, the Right Hon. Sir C. E. Grey and Sir G. Gipps, His Majesty's Commissioners of Inquiry in Lower Canada.

My Lord and Gentlemen, Downing-street, 17 July 1835.

. . . . . .

5. Before I approach more closely to the discussion of the questions which will principally engage your attention, it is necessary that I should explain the motives by which His Majesty has been induced to issue the commission which you are about to execute.

6. The dissensions which commenced in Lower Canada in the year 1820, have since that time, with some transient intermissions, been continually increasing in violence and animosity. They have at length advanced to such a height as not only to invade the peace of society, but nearly to paralyse the activity of the executive government, threatening with the most fatal confusion a country exempt beyond the common lot of nations from the influence of ordinary causes of social evil.

7. This state of affairs in a portion of the King's dominions so valuable, and otherwise so prosperous, has engaged His Majesty's most anxious and deliberate attention. To heal the disorders by which the province is distracted, and to restore internal peace and union, it has appeared to His Majesty necessary to adopt some well-digested and comprehensive plan of adjustment. But the foundation of such a plan must be laid in a complete knowledge of the people in all its bearings, moral, social and political.

8. Notwithstanding the variety and amount of the intelligence on this subject which has been collected during the last few years, there is yet a deficiency of adequate information upon many questions of the greatest moment to the correct apprehension of the state of Canadian affairs. The seven years which have elapsed since the first Parliamentary Report have given birth to numerous changes, to new wants, new interests, and new combinations of interests. The very removal of some grievances has, in some instances, aggravated those which remain or altered their relation to each other. The general balance of society has also been constantly and rapidly affected by the infusion of new masses of inhabitants, bringing with them new views and prepossessions. In order to

[1] These instructions represent the complete policy of 'conciliation', as it was termed by the anti-French Canadians. The commissioners returned in 1836 six reports (*British Parliamentary Papers* 1837, xxiv). Out of suggestions in their final report emerged the ten resolutions (No. XCIII).

appreciate the actual wants and wishes of a country developing its resources and undergoing internal changes with such extreme rapidity, it is necessary that a new and careful survey should be made, by impartial and intelligent observers, of the state and prospects of society in the province. The crisis cannot be met by effective measures, unless those measures be founded on the results of such an inquiry. His Majesty has been induced to sanction your mission to Lower Canada, in the hope that you will be able to conduct this investigation to a satisfactory and successful issue.

9. It is His Majesty's earnest injunction, that in the discharge of this duty you avail yourselves of every opportunity to impress the minds of the people of Lower Canada with a just sense of the warmth and honesty of feeling with which their interests are regarded by all orders of society in this kingdom; that you consult with equal kindness the claims and wishes of every class of His Majesty's Canadian subjects; and that by applying to the consideration of every question which shall come before you the maxims of an enlightened policy, you endeavour to unite the inhabitants of the province in mutual concord, and to strengthen the bonds by which they are connected with the other members of the British empire.

10. Proceeding in this spirit to Lower Canada, you will there make universally known His Majesty's deep solicitude to redress, to the utmost extent of his lawful authority, every real grievance under which his Canadian subjects may labour. You will listen with the most respectful attention to every complaint, and investigate by all accessible evidence, oral or documentary, the merits of every question which shall be brought before you. You will ascertain by personal inspection what are the real points in which, in practice, the existing system presses most severely; and in consultation with each other, you will mature such plans as may appear to you best adapted to place the affairs of the province on a permanent basis of order and of well-regulated liberty.

11. His Majesty has thought it proper that the Commission should consist of more than one member, because the proposed range of inquiry will embrace so many topics, legislative, judicial, fiscal, moral and social, that it is not to be imagined that the studies or previous habits of any single mind, however gifted, would be sufficient to compass them all.

12. With the actual administration of the provincial government the commissioners, as such, will have no concern. Although the Earl of Gosford, the Governor-general of all His Majesty's Colonies in British North America, has been placed at the head of the Commission, his Lordship's functions as Commissioner are totally distinct from those which he will discharge as head of the government. The duty of the Commissioners is limited, with the utmost strictness, to inquiry, to mutual deliberations, and to reporting, for His Majesty's information, the conclusions which they may be led to adopt. The Governor will alone exercise the powers which have been vested in his predecessors under the Constitutional Act of 1791.

13. But although your duty as Commissioners be exclusively to inquire, to deliberate, and to report; yet, within the sphere of that duty you are placed under no restrictions, excepting such as the necessity of the case or your own judgment may prescribe. You will lay before His Majesty a faithful statement of all matters entrusted to your investigation, and of your matured sentiments regarding them. It will then remain for the King, on the advice of his confidential servants, to determine on the course of action to be pursued. Your counsels and those measures will have for their common object the advancement of the welfare and prosperity of Lower Canada by all methods compatible with the integrity of the empire, and with the authority of the King as supreme in all parts of the British dominions.

14. You will ever bear in mind that you are sent on a mission of peace and conciliation. You will therefore proceed in a spirit not of distrust, but of confidence; remembering that much of your success will depend, not only on the zeal, ability and fairness of your inquiries, but also on your perfect separation from all local and party disputes, and on the unquestionable frankness and impartiality of your general conduct.

15. I must not omit to observe, that the legislature of Lower Canada must ultimately be the instrument through which any benefits resulting from your mission must, to a very great extent, be accomplished. His Majesty disclaims the intention of provoking any unnecessary Parliamentary interferences in the

internal affairs of the province. To mediate between adverse parties, with an entire respect for the constitutional rights common to them all, is the high office appropriate to his Royal station, and this function the King, aided by your inquiries and advice, is anxious on the present occasion to perform.

16. With these preliminary remarks on the motives in which your mission has originated, and on the spirit in which your duties as Commissioners are to be discharged, I proceed to advert to some of the more prominent subjects of claim and complaint on the part of the House of Assembly.

17. Among the most pressing of these is the Financial Question which has given rise to so protracted a controversy.

18. After the several gradations through which this question has passed, it has at length assumed the following shape:—As representatives of the people of Lower Canada, the House of Assembly claim the right of appropriating to the public service, according to their own discretion, the whole of the revenues of the Crown accruing within the province. The claim extends to the proceeds of all Parliamentary and provincial statutes, whatever may have been the original conditions of these grants; to the funds drawn from the sale of timber and of the waste lands of the Crown; to all fines and forfeitures; and to the income derived from the Seigneurial rights inherited by the King from his royal predecessors. In fine, the authority of the local legislature over the income and expenditure of the province is declared to be so extensive as to embrace every part of that receipt and outlay, and so inalienable as to supersede even the concessions deliberately made in preceding times by the former representatives of the Canadian people.

19. Without pausing to discuss the great constitutional questions which these claims involve, I content myself with referring to the undoubted fact, that the Kings of England have at all times been, in right of their Crown, in possession of certain sources of revenue peculiarly their own, and of which they could not be divested, except by their own consent. In modern times, as is well known, the control of Parliament over this revenue in these kingdoms has been established on the accession of each Sovereign to the Throne by a solemn compact made between the Crown and the Houses of Lords and Commons. If, therefore, the King were disposed to insist upon positive law, ancient practice, or constitutional analogy, His Majesty might readily vindicate his right to dispose of the territorial, hereditary and casual revenue of the Crown arising in Lower Canada, towards the maintenance of the civil government in that part of his dominions. But anxious to render his reign a blessing to his Canadian subjects, His Majesty is prepared to decline taking this ground, and to refer the decision of the question to the single test of the advantage or disadvantage to the province, with which the proposed cession would be attended. It would be difficult to imagine any pecuniary sacrifice which would not be wisely incurred in purchasing a peaceful settlement of the dissensions of the last fifteen years.

20. If pecuniary interests alone were at stake, the King would not hesitate to make this cession permanently and without conditions. They must ill indeed have understood the character and policy of the British Government, who may have supposed that the peace and well-being of this great empire, has been put to hazard in a prolonged contest with the most valuable of its foreign dependencies, for the sake of a sum of money so insignificant, as to be scarcely perceptible in the financial operations of Great Britain, and of no considerable moment even in those of Lower Canada. During the progress of this controversy, there have been expended by Parliament, for objects altogether Canadian, sums, compared with which, the utmost demand that has been made on the liberality of the House of Assembly, for the support of the executive government of the province, is altogether trivial. The real importance of connecting the surrender of the hereditary and territorial revenue with some reservation or conditions for the support of the civil government, and for the administration of justice, rests upon grounds far higher than any which could be brought to a pecuniary measurement. There are objects essential, as it would seem, to the welfare of His Majesty's Canadian subjects which could not probably be secured if that surrender were made unconditionally. In this view of the question, His Majesty is bound not to relinquish the appropriation of funds which the law and the constitution have placed at his disposal, without making a stipulation suggested exclusively by his care for the common benefit of his people.

21. Amongst the foremost of the objects which His Majesty is thus bound

to rescue from a precarious support, are the independence of the judges and the pure administration of the law. From the commencement of his reign, it has been the constant and persevering effort of His Majesty to render the judges of the Superior Courts in Lower Canada independent alike of the Crown for the tenure of their offices, and of the representatives of the people for their annual emoluments. In the various documents already noticed you will find the history of those attempts, and a full explanation of the causes to which their failure is to be ascribed. Yet a review of the Journals of the Assembly will, I think, convince you that between that House and His Majesty's Government no real, or at least no irreconcileable, difference of opinion exists on this subject. On the contrary, you will find, that respecting the general principles on which we must proceed, a perfect unanimity has prevailed. It is fully admitted that the judges ought to hold their offices not at the pleasure of the King, but during good behaviour, and that their official incomes should be paid, not at the pleasure of the popular branch of the legislature, but from adequate funds to be irrevocably pledged for that purpose.

22. This, then, will be one of the subjects of your earliest inquiry; and you will endeavour to suggest the plan of a law, in which there may be good ground to anticipate the concurrence of the House of Assembly, for the securing of judicial independence. If this can be effected, one of the chief difficulties which might otherwise obstruct the cession of the revenues, would be overcome.

23. The regard which it is His Majesty's duty to maintain for the welfare of the people of Lower Canada, appears to forbid a surrender of the revenues of the Crown in that province to the appropriation of the legislature, unless some condition be further made for the support of the executive government by an adequate civil list.

24. I pass over, without any direct notice, the grounds on which the contending parties in the province have, on the one hand, urged the necessity of such a stipulation, and, on the other hand, denied that it could be safely or constitutionally admitted. You will readily learn from various public documents, which will be pressed upon your attention, in the province itself, what are the arguments to which I refer. I cannot, however, abstain from recording in this place, the principal considerations which appear to make it necessary, that the concession about to be made to the provincial legislature should be qualified by the demand of a proper civil list.

25. A constant altercation between the House of Assembly and the executive government, on the subject of the official emoluments of the chief officers of the Crown, would be derogatory to the character of those officers, and especially of the Governor, representing the person and clothed with the delegated prerogatives of the King. The tendency of such controversies would unavoidably be, to induce a dis-esteem for those functionaries, by exhibiting them in the light of pensioners on the reluctant bounty of the representatives of the people; although the common welfare of society evidently requires that they should rather be respected as the ministers of the King; exercising, under a just responsibility indeed, but yet with freedom and independence, the powers confided to them for the public good.

26. The continued agitation of a subject so capable of being placed in an invidious light, could scarcely be compatible with the tranquil and steady progress of those most important branches of the public business, with which the higher functionaries of the government are charged. It would also be directly injurious to them, and therefore to the society at the head of which they are placed, thus to give an habitual and offensive prominence to the remuneration they were receiving, and in the same degree to divert public attention from the services by which that pecuniary reward was earned.

27. The security which the Governor and his principal officers would derive from the grant of a civil list, would strengthen the connexion subsisting between Canada and the other members of the British empire. It would be a distinct recognition of the principle, that the administration of the affairs of the province, by a Governor and officers appointed by the King, is a substantive and essential part of the provincial constitution. To debate from year to year whether grants shall or shall not be made for the support of such functionaries, might almost seem to involve a tacit assumption, that the existence of such offices was itself a question open to annual revision. In so remote a part of His Majesty's dominions, it is especially necessary that the Royal Authority, as represented by His

Majesty's officers, should be most distinctly admitted as one of the component and inseparable principles of the social system.

28. Nor are the motives by which the independence of the judges has been recommended by the King, and admitted by the Assembly, inapplicable to the case of the principal officers of the local government. They have frequently unpopular duties to perform; they are not seldom called to oppose the passions and emotions of the day; and, for the permanent well-being of society, to brave the displeasure of the popular leaders. They should therefore be raised above all influence, and all suspicion of influence, of unworthy fear or favour. The interests of freedom and of good government require that those upon whose firmness and constancy the maintenance of order and the authority of the laws mainly depend, should not be looking for their subsistence to the favour of a body, which necessarily reflects most of the fluctuating movements of the public mind.

29. Such are the principle motives which induce me to conclude that the King could not consistently with the interests of his Canadian subjects, relinquish, except in return for an adequate civil list, the control which His Majesty at present exercises over the hereditary and territorial revenue.

30. It will be for you to consider and report, what ought to be the precise terms of this stipulation. A temporary cession of the revenue, in return for a provision for the chief public officers of the province for a corresponding period, would be the most satisfactory arrangement. In the rapid progress of settlement in the Canadian provinces, a few years will probably be productive of changes, demanding a corresponding alteration in the terms of any adjustment concluded at the present period; and a decennial revision of the compact now to be made, would seem best calculated to secure those public benefits, and avert those public evils, by the hope or fear of which the compact itself is recommended.

31. If however a temporary settlement, to be renewed from time to time, should prove impracticable, or upon a closer consideration of the subject should seem to you inexpedient, you will then consider in what manner the inconveniences inseparable from the permanent adjustment of such a question can be most effectually mitigated or avoided.

32. Respecting the amount of the civil list to be demanded, the very moderate proposal of the Earl of Ripon might perhaps be taken as the basis. But as his Lordship proposed to retain for the Crown, the control of the territorial and hereditary revenue, it would be in perfect consistency with his principle to advance beyond the limit of his demands. It will be for you to consider what part of the public revenue ought thus to be withdrawn from the annual appropriation of the provincial legislature. In attempting to draw this line, you will judge what are those services in the performance of which the common good requires that the officers of the Crown should be elevated above the reach of popular prepossessions and prejudices. Other considerations will probably claim a place in deciding on the amount of the civil list to be demanded; but to maintain the proper freedom of action in the chief organs of the executive government, will be the principal object to be borne in view.

33. The opponents of the claims preferred by the House of Assembly to the control of the territorial revenue insist, with peculiar emphasis, that the necessary effect of yielding to this claim would be, to transfer from the executive government to the popular branch of the legislature the management of the uncleared territory, asserting that the assumption of this duty by the House of Assembly would be most injurious to the agricultural and financial interests of Lower Canada.

34. Were the right of appropriating the revenue arising from the Crown lands, and the charge of their management indissolubly connected, I should admit this reasoning to be correct. The objections to the combination in the same hands of a large share of the legislative power with so important a branch of the executive authority, are too obvious to escape your notice; and I therefore may, without inconvenience, abstain from a particular explanation of them. It may be sufficient to say, that His Majesty's confidential advisers regard as conclusive and unanswerable, the objections which are made to confiding the management of the uncleared territory of Lower Canada to either or to both of the Houses of General Assembly, or to persons appointed by them and subject to their control.

35. In the distribution of the different powers of the State, the office of

settling and alienating the uncleared territory properly belongs to the executive government.

36. It is competent to the legislature upon this as upon other subjects to lay down general rules for the guidance of the executive authorities; or either branch of the legislature may separately offer its advice to the Crown as to the policy and system of management which it thinks should be pursued; but the practical application of such general rules, and the charge of carrying into effect the system of management which may be approved, are functions so strictly of an executive and administrative character, that they can only be properly discharged by those in whose hands all similar powers are lodged by the constitution. Nor am I aware of any ground on which a surrender of that trust could be properly required from His Majesty, or which would justify the resignation of it by the King.

37. Wishing to meet the whole subject frankly and without reserve, I am not disposed to deny, that at a period which perhaps can hardly be called remote, large grants of land were improvidently made to persons who had no legitimate title to that advantage; but this I believe to have been the necessary consequence of a system of management which, though faulty in itself, was consonant with opinions prevalent at the time of its establishment; and I am entitled, on behalf of the executive government, as administered by Lord Ripon and by his Lordship's successors, to assert, that they gave conclusive evidence both of the disposition to originate, and of the ability to effect, a complete reform in this department of the public service. Lord Ripon took the most effectual security against the recurrence of such abuses, by establishing the rule, that no waste lands should be disposed of except by public auction, and at such an upset price as should effectually prevent fictitious sales. I am aware that complaint has been made of the infringement of this rule; but after the most careful search into all the documents within my reach, I am able to declare that I find no evidence of a solitary deviation from it. The cases mentioned as exceptions, are all to be explained by the same simple statement. Persons who, before the date of Lord Ripon's regulations, had entered into contracts, or had received from the government promises for the grant of lands upon different terms, insisted afterwards on their earlier titles; against which, of course, it would have been unjust to plead a subsequent and retrospective rule.

38. But while claiming for His Majesty, and for the public officers appointed by him, the right and duty to regulate the settlement and alienation of the wild lands of the Crown, I am not only ready, but anxious that every proper security should be taken for the intelligent, faithful, and punctual execution of that duty; nor does it seem to me that it would necessarily be incompatible with these objects, to place the territorial revenue at the disposal of the legislature.

39. In considering this subject, it will be, in the first place, necessary to determine the principles upon which the uncleared territory could be most advantageously brought into settlement. This inquiry has engaged the serious attention both of speculative observers and of persons practically engaged in such affairs. Lord Ripon evidently devoted to it much time and thought; and his Instructions to Lord Aylmer on this head rest on principles which certainly underwent a very close investigation. Aware, as I am, how many are the sources of error to which speculations of this kind are liable, and how necessary it is for the correction of such fallacies, to possess an intimate acquaintance with the scene in which such abstract principles are reduced to practice, I express my concurrence in the general views of my predecessor, with the same self-distrust by which he appears to have been actuated. It was under the influence of that feeling, as well as from respect for the local authorities, that Lord Ripon took the wise course of soliciting the advice of the House of Assembly for the guidance of the local government in maturing his scheme, and in the discharge of the duties connected with it. The House has not, as yet, acted on that request.

40. This silence may, I trust, be understood to imply an approbation of the system so fully explained by Lord Ripon; but as it is of the greatest importance that some permanent rules should be prescribed upon this subject which cannot with propriety be left to the arbitrary discretion of any functionaries, however eminent in character or station, it will be part of your duty to inquire and ascertain what are the principles and the rules which could be most conveniently adopted for this purpose. The existing regulations, if not perfect, seem at least sufficiently accurate to form the basis of a legislative enactment on the subject.

You will, however, have an opportunity of learning how far Lord Ripon's plan has really been productive of the beneficial effects which his Lordship anticipated, and how far any unforeseen difficulties may have embarrassed its operation. You will thus be enabled to judge to what extent it may demand or admit of amendment.

41. But it will be necessary not merely to determine the general system of management which should be adopted, but likewise to provide adequate machinery by which that system may be practically applied. In your inquiries upon this head, your attention will naturally be drawn to the course of proceeding followed in this country, in a case which, however distinguishable, is not dissimilar from that of the management of the wild lands in Lower Canada. The land revenue of the Crown in England, is placed under the direction of a Board, of which all the members are appointed by the King.

42. The Commissioners of Woods and Forests, under the direction of the Treasury, receive the rents and profits which arise from the estates of the Crown; apply such portions of the receipts, as in their discretion they think expedient, in the improvement of the property, and in defraying the various expenses of management; and transfer the balance which may remain to the public account, under the compact entered into at the commencement of the reign. As a check upon any abuse in the discharge of these duties, and more especially in the application out of the gross revenue of the sums required for the management and improvement of the estates, the Board is placed under the obligation of presenting, annually, to both Houses of Parliament a full report of its proceedings, including an account, in detail, of all receipts and disbursements within the preceding year.

43. You will consider whether any obstacles exist to the adoption, in Lower Canada, of a similar arrangement, which, if practicable, would remove the principal difficulty in making over to the legislature the right of appropriating the territorial revenue, by securing to the executive government that free action in the management of the wild lands of the Crown which it is absolutely essential to preserve.

44. It remains to notice one other topic, which must be considered in connection with the proposed financial arrangements. The cession of the hereditary and territorial revenue to the appropriation of the provincial legislature, would deprive the King of the means of paying the pensions and compensation allowances which have been charged upon that fund, in the exercise of His Majesty's lawful and undoubted authority. It is almost superfluous to say, that any violation of the pledged faith of the Crown cannot, in the prospect of any advantage whatever, be admitted even as the subject of debate. The total charge under this head is of no formidable amount; and, as far as I can ascertain, there is no single case in which such a grant has been charged upon the Crown revenues of the province, without a substantial and adequate ground of personal desert or public policy.

45. You will ascertain what are all the liabilities to which this revenue is legally subject. His Majesty will not consent to abandon the cause of any claimant whose title may rest upon a legal foundation. No plan of surrendering to the provincial legislature the appropriation of these funds will be submitted by yourselves to the King, or proposed by His Majesty to the Assembly, which does not comprise, as an essential part of its basis, the maintenance of such legal titles.

46. I will not allow myself to suppose that, on this subject, any difference of opinion can arise between the executive government and the representatives of the Canadian people. The charge for pensions and compensation allowances will be continually diminishing; nor will it be forgotten that, by the proposed arrangement, His Majesty would surrender the exercise of the most grateful of the Royal functions, reserving to himself no funds for the reward of merit, however distinguished, but devolving entirely on the local legislature, the means of dispensing public favour, and of testifying public gratitude. But although His Majesty abstains from demanding a control over any part of the revenue of the province, for the purpose either of relieving faithful public servants when labouring under the pressure of old age or sickness, and incapable of performing their accustomed duties, or even of rewarding eminent merit, yet, as often as such cases may arise, His Majesty will lay his commands on the Governors of the province to prefer the claims of such persons to the justice and liberality of the

House of Assembly. Nor does His Majesty doubt that to such applications the representatives of the people of Lower Canada will accord a cheerful assent.

47. I have now enumerated the various subjects which, I think, may fairly enter as conditions into any arrangement for the cession of the Crown revenue. They are, the independence of the judges; the settlement of a civil list; the management of the waste lands; and the continuance of existing pensions. If on these topics a satisfactory adjustment can be made, I am not aware that there will remain any further difficulty in the way of a compliance with the wishes of the House of Assembly on the subject of the appropriation of the provincial revenues.

48. I am not, however, insensible to the danger of overlooking, at this distance from the scene, some conditions which, on closer observation, it might seem necessary to embrace in the final settlement of a plan, at once so comprehensive and so important to the best interests of the province. During your residence in Lower Canada, some topics kindred to those to which I have adverted may present themselves to your notice; and you will not exclude from your consideration any question which may appear to you to have a material bearing on the decision to be ultimately adopted by the King. To place the financial affairs of the province on some safe and permanent basis, and thus to relieve the executive government and the two Houses of General Assembly from the unhappy distractions of the last 15 years, may be truly stated to be the main object of your mission. It will, therefore, receive your first and most careful attention.

49. I next proceed to the consideration of a subject which has given rise to long and embarrassing discussions between the executive government and the House of General Assembly; I refer to the tenures on which lands in the Province of Lower Canada are holden. Much controversy has prevailed, not only respecting the legal incidents of soccage tenure in that province, but also respecting the comparative advantages of holding land in fief and seigneurie, or in soccage, and a question has arisen whether these controversies would be more properly adjusted by Parliamentary or by provincial enactments. Convinced of the propriety of referring the whole subject to the provincial legislature, Lord Ripon embodied that principle in an Act which was passed in 1831. It has been since maintained that the language of that statute is not sufficiently precise or copious to effect the real design of its author; and it has been strongly pressed on His Majesty's Government that Parliament should be advised to repeal the Canada Tenures Act of 1825.

50. On the whole of this subject I am well convinced that the Imperial Legislature will adopt any measure distinctly recommended to them by the legislature of Lower Canada. To advance any further, except at the instance of that legislature, and with a perfect assurance of its approbation, would be to disregard every lesson to be derived from the experience of past years. No security less than the distinct declaration by the local legislature, of their wish for such a proceeding, could rescue the authors of a new Parliamentary enactment respecting Canadian tenures from the reproach of invading, in violation of the most solemn pledges, one of the admitted privileges of the Governor, Council, and Assembly. The law as it at present stands, invests the local legislature completely with the right of dealing with Acts of the Imperial Parliament relating to tenures of land in the province, and it does so, as it appears to me, in terms as ample as could possibly be selected. The principle of avoiding all unnecessary interference is, I think, more effectually respected by this delegation to the provincial legislature of the right to repeal all or any of the provisions of British Acts respecting tenures, than by a repeal of such Acts directly, or in the first instance by the British Parliament itself.

51. The more material inquiry, however, is, whether there be sufficient reason for commuting the existing feudal tenures into the tenure in free and common soccage; or for subjecting the soccage lands to any of the incidents of the tenure in fief and seigneurie; and under what tenure those lands which yet remain a part of the demesne of the Crown should hereafter be granted. Ample materials exist from which a correct judgment on this question might be drawn by persons resident in the province.

52. You will ascertain what have been the real consequences of the two different kinds of tenure on the prosperity of the different portions of the province in which they have respectively prevailed.

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64. The importance of the topics to which I have hitherto adverted would be very imperfectly understood, unless they were viewed in their connection with another question to which the majority of the House of Assembly would seem to attach a yet higher interest. In the 92 Resolutions of the Session of 1834,[1] in the address to His Majesty of that year, and in the address adopted in the Session which closed abruptly in the commencement of the present year, the constitution of the Legislative Council was insisted upon as the chief and prominent grievance in the whole system of provincial government. To the discussion of this subject, nearly half of those resolutions, and of those addresses, is devoted; and the Assembly, in the most decided language, have declared that all remedial measures will be futile and unsatisfactory which should stop short of rendering the seats in the Legislative Council dependent on a popular election.

65. The petitioners [2] of Quebec and Montreal, on the other hand, deprecate with equal earnestness any departure from the principle on which the appointment of the members of the Legislative Council is regulated by the Act of 1791, and denounce any such change as pregnant with the most formidable evils.

66. The King is most unwilling to admit, as open to debate, the question whether one of the vital principles of the provincial government shall undergo alteration. The solemn pledges so repeatedly given for the maintenance of that system, and every just prepossession derived from constitutional usage and analogy, are alike opposed to such innovations, and might almost seem to preclude the discussion of them.

67. But His Majesty cannot forget that it is the admitted right of all his subjects to prefer to him, as King of these realms, their petitions for the redress of any real or supposed grievances. His Majesty especially recognises this right in those who are themselves called to the high office of representing a large and most important class of his people. The acknowledgment of that right appears to the King to imply on his own part, the corresponding duty of investigating the foundations of every such complaint. His Majesty therefore will not absolutely close the avenue to inquiry, even on a question respecting which he is bound to declare that he can for the present perceive no reasonable ground of doubt. His Majesty will not refuse to those who advocate such extensive alterations, an opportunity of proving the existence of the grievances to which so much prominency has been given.

68. The King is rather induced to adopt this course, because His Majesty is not prepared to deny that a statute which has been in effective operation for something less than forty-three years may be capable of improvement, or that the plan upon which the Legislative Council is constituted may possibly in some particulars be usefully modified; or that in the course of those years some practical errors may have been committed by the Council, against the repetition of which adequate security ought to be taken. Yet if these suppositions should be completely verified, it would yet remain to be shown, by the most conclusive and circumstantial proof, that it it necessary to advance to a change so vital as that which is demanded by the House of Assembly.

69. It must be recollected that the form of provincial constitution in question is no modern experiment nor plan of government, in favour of which nothing better than doubtful theory can be urged. A Council nominated by the King, and possessing a co-ordinate right of legislation with the representatives of the people, is an invariable part of the British colonial constitution in all the Transatlantic possessions of the Crown, with the exception of those which still remain liable to the Legislative authority of the King in Council. In some of these colonies it has existed for nearly two centuries. Before the recognition of the United States as an independent nation, it prevailed over every part of the British possessions in the North American continent, not comprised within the limits of colonies founded by charters of incorporation. The considerations ought indeed to be weighty which should induce a departure from a system recommended by so long and successful a course of historical precedent.

70. To the proposal made by that body to refer the consideration of this question to public conventions, or, as they are termed primary meetings, to be holden by the people at large in every part of the province, His Majesty commands me to oppose his direct negative. Such appeals are utterly foreign to the principles and habits of the British constitution, as existing either in this kingdom or in any of the foreign dependencies of the Crown.

[1] No. LXXXIII. [2] Cf. Nos. LXXXIV and LXXXV.

71. You will therefore apply yourselves to the investigation of this part of the general subject, endeavouring to ascertain how far the Legislative Council has really answered the original objects of its institution; and considering of what amendments it may be susceptible. It is His Majesty's most earnest hope and trust that in the practical working of the constitution of the province, there will be found to exist, no defects which may not be removed by a judicious exercise of those powers which belong to the Crown, or which Parliament has committed to the provincial legislature.

72. When your report shall have been received, His Majesty will take into his most serious consideration the question whether there are any amendments in the law on this subject, which it would be fit to propose for the consideration of the Imperial Legislature; and which being founded on the principles, and conceived in the spirit of the Act of 1791, may be calculated to render the practical operation of that statute more conformable to the wishes and intentions of its framers.

73. There is one complaint closely connected with the topic referred to, of which I do not find any notice in the Resolutions of the Assembly. The constitution of Lower Canada consists of various branches or members. To each of which Parliament has assigned such functions as were thought necessary to counterbalance the danger of abuse in the other organs of government. If the balance be disturbed, a counterpoise would be required to rectify the disturbance. It is earnestly maintained by many, that the House of Assembly does not supply a fair representation of the Canadian people; that the constituencies throughout the province are so arranged as to insure the return of a much larger proportion of members in the interest of the Canadians of French descent, than is warranted either by their numbers or their property; and that neither the commercial interest, nor the landholders in the townships, are protected in the popular branch of the legislature with any just regard to their importance, or to the wealth and number of the persons embraced in those classes. The Canadians of British descent have been therefore, it is said, accustomed to look to the Legislative Council for defence against the partiality which they ascribe to the members of the House of Assembly.

74. On the truth and justice of these representations, it is not for me here to pronounce an opinion. But assuming them to be true, it is clear that the existence of such a state of things would throw additional difficulties round an attempt to modify the Legislative Council.

75. It will be necessary for you to inquire into the truth of these allegations. This duty indeed you are bound to perform, with a view to the general interests of the colony, even independently of any reference to its bearing on the construction of the Legislative Council. The number of persons of British or of French birth or origin actually sitting in the Assembly will of course afford a most imperfect criterion of the influence by which their seats may have been obtained, and of the course of policy to which they will habitually incline. The material question respects the national character and prepossessions rather of the several constituencies, than of the different members. Lower Canada must also be viewed as a country in which the limits of settlement and cultivation are continually widening. It requires therefore an elective system, resting on a principle such as shall accommodate itself to changes which are taking place in the circumstances of the electors, with a magnitude and rapidity to which there is no parallel in the communities of Europe.

76. If your inquiries should lead you to the conclusion, that a change in the Law of Election in Lower Canada is necessary or desirable, it will be right that the change should, if possible, be effected, not by an Act of Parliament, but by an Act of the local legislature.

77. The composition of the executive council has also been made the subject of censure. It is maintained that the members of the body are incompetent to the judicial duty with which they are charged, and unfit to act as the confidential advisers of the Governor in their more appropriate office of aiding in the execution of his administrative authority. Hence, it is said, has arisen the habit of appealing, with inconvenient frequency, to the Secretary of State, on many questions which might more advantageously have been disposed of in the province itself. To this practice is ascribed not only much needless delay in the dispatch of public business, but the mischief inseparable from bringing the ultimate and supreme executive authority into needless collision with individuals and with the two Houses of Legislature.

78. So far as these complaints refer to the appellate jurisdiction of the executive councillors, there appears an unanimity so entire amongst all the parties concerned, that the only subject of inquiry is, by what means that jurisdiction can be most speedily and advantageously transferred to a more appropriate tribunal. But, on the other branch of the subject, there is a wider scope for investigation.

79. I am disposed to doubt whether the number of the members of the executive council might not be reduced with advantage to the community. In the Indian presidencies, as well as in all the new British colonies, the number is limited to three or four. A much larger number would seem scarcely compatible either with promptitude, secrecy, and a due sense of personal responsibility; or with calmness of deliberation, freedom from party dissensions, and exemption from the danger of inconvenient compromise. If three members only had seats at the board, it might at once be reasonable to impose, and possible to enforce, the observance of the rule, that on all questions of importance the Governor should be bound to explain to the board his own opinions, and to receive from them, in return, an explanation of theirs. This, however, is a subject on which His Majesty is not, at the present moment, disposed to act without the aid of your judgment and report.

80. I would not, however, exclude from your consideration any proposal of which it is the professed object to render the Executive Council a more effective instrument of good government. You will therefore report whether there are any practicable amendments which, on the whole, it would be desirable to adopt, either in the mode of convening, of consulting, or remunerating the members of this body, or regarding the tenures of their seats.

81. The state of education of Lower Canada must engage your most serious attention, with a view to the best means of promoting the more general diffusion of sound learning, religious knowledge, and Christian principles. Of His Majesty's anxiety in regard to these paramount objects, it would be difficult to speak in terms sufficiently emphatic. But the earnest endeavours of my predecessors on this subject have been so repeatedly frustrated, that I suspect the existence of some obstacles of which the Home Government is not aware. Amidst the heat of contention on questions comparatively of slight temporary concern, this momentous and permanent interest of the whole Canadian people may have been overlooked. Sufficient attention, perhaps, has not been given to the essential distinctions between the state of society in this kingdom and in the province. It may have been forgotten that in a new country, pressing forward in the career of agricultural and commercial enterprize, it is far more impolitic than in this kngdom to calculate on the voluntary exertions of those who combine the advantages of wealth and leisure with practical experience in public affairs. If His Majesty's Government have not hitherto addressed themselves with sufficient promptitude to the duty of devising and recommending well-considered plans, for an object so nearly touching the moral and intellectual no less than the social benefit of the Canadian people, it is an error which cannot be too frankly confessed nor too zealously redeemed.

82. You will therefore apply yourselves to the collection of all such intelligence as may be necessary for framing a general system of provincial education, embracing not the mere rudiments of literature, but all that relates to the culture of the minds and the development of the moral and religious principles of youth in the different ranks of society. This is a task, the due performance of which requires so intimate an acquaintance with the character and wants of the people, that I doubt whether, within the time of your residence in Canada, it will be possible for you to be completely prepared to form a deliberate conclusion on a question thus comprehensive. It will, however, be of great value if a commencement can be made, resting on a solid basis, on which, aided by the co-operation of the Governor, a more complete structure may hereafter be erected by the Legislative Council and Assembly. I am sanguine in the hope that such will be the result of your inquiries and your report.

83. The last topic to which I shall refer in my present communication is, the distribution between the Provinces of Lower and Upper Canada of duties, levied under Acts of Parliament or Statutes of the Lower Province, at the ports in the River St. Lawrence. The interposition of Parliament to apportion these funds was dictated and justified by necessity. Between two great dependencies of the empire, at variance on a question of the deepest interest to both, Parliament

assumed an authority to mediate, not with a view to any interest exclusively or principally British, but for the sake of objects altogether Canadian. Still it has never been disputed or concealed, that this intervention was accompanied by the exercise of an extreme right, nor have His Majesty's Government ever been slow to seize every opportunity for remitting the decision of this dispute to the legislatures, within whose cognizance the question properly falls. You will make it your business to inquire whether such an adjustment of the rights of the two provinces, satisfactory to them both, can be devised, as would justify the repeal of the Canada Trade Act. If any such project can be matured, His Majesty's Government would be happy to introduce into Parliament the necessary measure for accomplishing that repeal.

84. It appears from the records of this office that my immediate predecessor, the Earl of Aberdeen investigated with great diligence the question whether the recommendations of the House of Commons' Committee of 1828, on Canadian Affairs, had been completely executed. The result of those inquiries his Lordship embodied in a Minute of which I have the honour to enclose a copy for your information. In reliance on the habitual accuracy of Lord Aberdeen, I think myself entitled confidently to maintain with him, that to each of the recommendations of that Committee, the King has given complete effect to the utmost extent of His Majesty's constitutional authority; that in obedience to His Majesty's commands, the most pressing instances have been made to the Legislative Council and Assembly to accomplish every other part of the designs of that Committee to which legislative aid was indispensable; and further, that so frank and cordial was the spirit in which those concessions were made, that on every one of the principal topics included in the Report of 1828, His Majesty spontaneously advanced considerably beyond the limits recommended by its authors.

85. This however, is a general conclusion of so much importance, and enters so largely into the justification of the policy observed by the King, from the commencement of his reign, towards his Canadian people, that His Majesty is not satisfied that it should rest merely on the revision undertaken by his own confidential servants, of the events of the last seven years. Desiring that it should be brought to the test of the most rigid and impartial inquiry, His Majesty commands me to instruct you, on your arrival in Lower Canada, to ascertain and to report whether the recommendations of the Canada Committee of 1828 have, to the full extent of His Majesty's authority and legitimate influence, been carried into complete effect; or whether there is any, and if any, what part of their advice which it yet remains with his Majesty to execute.

86. I have now adverted to all the topics which it is necessary to comprise in the present communication; I have accompanied them with such observations as the occasion seemed to require. In offering those observations I must again disclaim the remotest intention of fettering your discretion or of restricting in any degree the exercise of your own judgment, either as to the subjects of inquiry or the opinions at which you may arrive. In the course of your investigations new topics will occur to you, and new views of topics already familiar will present themselves. You will not on any occasion, or for any reason, shrink from the explicit declaration of your sentiments. You will not decline any inquiry, the prosecution of which may promise benefit to the colony or to the mother country. You cannot err, either in the selection or in the treating of questions, if you steadily bear in view the purpose for which His Majesty has been induced to entrust you with the execution of this commission, and the obligation under which you are placed to contribute, by every means in your power, to the accomplishment of that gracious purpose.

I have, &c.

(Signed) GLENELG.

## LXXXVIII

## GLENELG TO HEAD[1]

[Trans.: *Imperial Blue Books relating to Canada*, Vol. vi, 1836.]

Copy of a Despatch from Lord Glenelg to Sir F. B. Head.

Sir, Downing Street, 5 December 1835.

I have the honour herewith to transmit to you, a commission under His Majesty's sign-manual, appointing you lieutenant-governor of the province of Upper Canada.

You have been selected for this office at an era of more difficulty and importance than any which has hitherto occurred in the history of that part of His Majesty's dominions. The expression of confidence in your discretion and ability which the choice itself implies, would only be weakened by any more formal assurance which I could convey to you.

In the following instructions, I shall presuppose your knowledge of many occurrences, the correct understanding of which is essential to the discharge of the duties to which you are called, but which it is unnecessary for me to recapitulate. As, however, a more exact acquaintance with Canadian affairs is indispensable for your guidance in the administration of the government of Upper Canada, I think it right to refer you to those sources of information on which you will be able most safely to rely. Amongst these, the first place is due to the journals of the Legislative Council, and of the House of General Assembly. The appendices subjoined to the annual summary of the proceedings of the two Houses, contain a fund of information on almost every topic connected with the statistics and political interests of the province; and to those reports you will be able to resort with far greater confidence than to any other source of similar intelligence. The Report of the Committee of the House of Commons of the year 1828, with the evidence, oral and documentary, to which it refers, will also throw much light on the progress and the actual state of the questions agitated in the upper province. The correspondence of my predecessors and myself, with the officers who have successively administered the provincial government, will of course engage your careful attention.

In Upper Canada, as in all countries which enjoy the blessing of a free constitution, and of a legislature composed in part of the representatives of the people, the discussion of public grievances, whether real or supposed, has always been conducted with an earnestness and freedom of inquiry of which, even when occasionally carried to exaggeration, no reasonable complaint can be made. The representatives of the Canadian people, if departing at times from the measured style and exact terms in which the investigation of truth may perhaps be most successfully conducted, have yet, even in the agitation of questions the most deeply affecting the interests of their constituents, exhibited a studious respect for the person and authority of their Sovereign, and a zealous attachment to the principles of their balanced constitution. Until the last session of the provincial parliament, the remonstrances of the House were chiefly confined to insulated topics of complaint; discussions, indeed, occasionally arose, and discontent was occasionally manifested; but it may be affirmed, that generally there subsisted a spirit of amicable co-operation between the executive government and the legislature.

The cession by His Majesty of the revenues raised under the statute 14 Geo. 3, c. 88, to the appropriation of the House of Assembly,[2] was a gratuitous and unsolicited act, and was accepted by that body in a spirit of grateful cordiality.

I will not pause to recapitulate the events which immediately preceded, if they did not produce the interruption of this mutual good understanding. It is sufficient for my present object to observe, that the relations which had formerly subsisted between the executive government and the representatives of the people underwent an entire change immediately after the election which took place in the autumn of 1834. The supporters of the local government now for the first time found themselves in a constant minority on every question

[1] In this dispatch to the new governor of Upper Canada, sir Francis Bond Head, Glenelg outlines the methods of dealing with the *Seventh Report on Grievances* (No. LXXXVI).

[2] See No. LXXIX.

controverted between them and their political antagonists. A committee of grievances was appointed, by which a report was made impugning the administration of affairs in every department of the public service, and calling for remedial measures of such magnitude and variety as apparently to embrace every conceivable topic of complaint. Having adopted this report, and having directed its publication in an unusual form, the House transmitted through the lieutenant-governor, to the King, an address, in which some of the more considerable of the claims of the committee were urged in terms of no common emphasis. It will be your first duty on the assumption of the government to convey to the House the answer which His Majesty has been advised to return to these representations.

I cannot proceed to explain the terms of that answer without preliminary remark with a view to which the preceding statement has been chiefly made. Whatever may be the justice of the complaints now preferred respecting the general principles on which the public affairs of the province have been conducted, the representatives of the people of Upper Canada are at least not entitled to impute to the confidential advisers of the King any disregard of their remonstrances. The greater part of the grievances detailed by the committee and the House are not for the first time brought by them under His Majesty's notice. My predecessor, the Earl of Ripon, in his despatch of the 8th of November 1832, to Sir John Colborne, was commanded by the King to state, that "there was no class of the Canadian people, nor any individual amongst them, to whose petitions His Majesty did not require that the most exact and respectful attention should be given." His Majesty has never ceased to be actuated by the spirit which dictated those instructions, and of course will not deny to the House of General Assembly that careful investigation of the grounds of their complaints, which He graciously pledged himself to bestow on the representation of any individual petitioner. I feel myself therefore entitled, on behalf of His Majesty's Government, to object to any resort on the part of the House to that ulterior measure to which they allude, but which they will feel with me is to be justified only by an extreme emergency.

I now proceed to the consideration of the various topics embraced in the seventh report of the committee of grievances, and in the addresses of the two Houses to His Majesty: and I shall advert to them in the order in which they are pursued in the report itself.

In the following pages, if any subject should appear to be passed over without due regard, you will understand that I have at least been guilty of no intentional omission, but have, in obedience to His Majesty's commands, made it my endeavour to meet every question which the committee and the House have thought it necessary or proper to raise.

1. It is stated that "the almost unlimited extent of the patronage of the Crown, or rather of the Colonial Minister for the time being, and his advisers here, together with the abuse of that patronage, are the chief sources of colonial discontent. Such (it is added) is the patronage of the Colonial Office, that the granting or withholding of supplies is of no political importance, unless as an indication of the opinion of the country concerning the character of the Government, which is conducted on a system that admits its officers to take and apply the funds of the colonists without any legislative vote whatever." The committee then proceed to an enumeration of the various public offices, and the different departments and branches of the public service, over which this patronage is said to extend; and by bringing the whole into one view, they suggest what must be the amount of the authority and influence accruing to the executive government from these sources.

The statement is substantially this: that the number of public offices in the colony is too great; and that the patronage, instead of being vested, as at present, in the Crown, and the local representative of the Crown, should be transferred to other hands.

In the long enumeration of places at the disposal of the executive government in Upper Canada, the committee have not adverted to one consideration to which I think that great prominence might justly be assigned. It is perfectly true, as it is quite inevitable, that in Upper Canada, as in other new countries, the number of public employments is and will be far larger in proportion than in older and more densely-peopled states. The general machinery of government must be the same in a scanty as in a large and redundant population; corre-

sponding departments of the public service, whether legislative, judicial or administrative, must exist in both. And in a new country, besides, there will be some establishments for which in the settled states of Europe no counterpart can be found; such, for example, are all which relate to the allocation, surveying and granting of wild lands. Nor is it to be forgotten, that in the early stages of such a society many duties devolve upon the government, which at a more advanced period are undertaken by the better educated and wealthier classes, as an honourable occupation of their leisure time. Thus in the Canadas, although the mere text of the law would there, as in England, authorize any man to prefer and prosecute an indictment in His Majesty's name, yet virtually and in substance the prosecution of all offences is confided to the government or its officers. These causes have inevitably tended to swell the amount of the patronage of the provincial government, without supposing any peculiar avidity on their part for the exercise of such power.

With respect to the patronage of the requisite offices, His Majesty's Government are not solicitous to retain more in their own hands, or in those of the governor, than is necessary for the general welfare of the people and the right conduct of public affairs. I confess myself, however, unable to perceive to whom the choice amongst candidates for public employment could with equal safety be confided. It requires but little foresight or experience to discover that such patronage, if exercised in any form of popular election, or if committed to any popular body, would be liable to be employed for purposes far less defensible, and in a manner less conducive to the general good: chosen by irresponsible patrons, the public officers would themselves be virtually exempt from responsibility; and all the discipline and subordination which should connect together in one unbroken chain the King and his representative in the province, down to the lowest functionary to whom any portion of the powers of the state may be confided, would be immediately broken.

I conclude, therefore, that as in such a country as Canada there must exist a number of public officers, large in proportion to the present number and wealth of the inhabitants, so the selection of them must for the most part be entrusted to the head of the local government.

I disclaim, however, on the part of the Ministers of the Crown, every wish to urge these general principles beyond their just and necessary limits. There are cases in which I think, according to the analogy of similar cases in this country, the patronage now said to be exercised by the lieutenant-governor might with perfect safety and propriety be transferred to others. On this subject, however, it will be more convenient to state the general principle, than to attempt the specific and detailed application of it at this distance from the scene of action.

That principle is to maintain entire, by the nomination and removal of public officers, that system of subordination which should connect the head of the Government with every person through whose instrumentality he is to exercise the various delegated prerogatives of the Crown. What is necessary for this end must be retained; whatever patronage is unnecessary for the maintenance of this principle should be frankly and at once abandoned.

It is noticed in the report, as an aggravation of the evils of the government patronage, that almost every public officer holds his place at the pleasure of the Crown. I cannot disguise my opinion, that the public good would be little advanced if the subordinate functionaries held their places upon a more certain tenure. In practice, indeed, though subject to certain exceptions to be hereafter noticed, no public officer is in danger of losing his employment, except for misconduct or incompetency: but there are many kinds of misconduct and incompetency which could never be made the subject of judicial investigation, but which yet would be destructive of the usefulness of a public officer, and ought therefore to be followed by a dismissal from the public service. Nor is it necessary to insist at any length on the evils which would arise in the transaction of business, if the subordinate officers were aware that they were entirely independent of the good opinion of their superiors for continuance in their employments.

It is not difficult to show, in reference to any conceivable arrangement on the subject of patronage, that there will be dangers against which it is impossible to take an absolute and perfect security. I know not, however, that any less exceptionable scheme could be devised than that which at present prevails, of giving to the head of the local government the choice of the subordinate officers, and of making their places dependent on His Majesty's pleasure. To prevent,

however, as far as may be possible, the continuance of any well-founded ground of complaint on this head, His Majesty, disclaiming for himself and for his representatives in the province all desire to exercise, with the view merely to patronage, the power of appointing public officers, is pleased to prescribe for your guidance the following rules:

First: You will, at the earliest opportunity, enter into a diligent review of the offices in the appointment of the Crown and of the local government, as detailed in the report of the committee, and the appendix, with a view to ascertain to what extent they may, without impairing the efficiency of the public service, be reduced immediately and prospectively. You will report to me the result of your investigation, with such particular information as will enable His Majesty's Government to decide in each case on the expediency of adopting your recommendation.

Secondly: If, during the reference of that report to me, any occasion occur for the reduction of offices, either by abolition or by consolidation, you will exercise your own discretion as to waiting for fresh instructions, or proceeding at once to the reduction. Any appointment, however, made under such circumstances, will be merely provisional. In case of the immediate abolition of any office not required for the efficient discharge of the public service, you will stipulate for such a compensation to the present holders, as the disappointment of their reasonable expectations may entitle them to receive.

Thirdly: In the prescribed revision of these offices you will make it one of your objects to form a judgment what share of the patronage of the Crown or the local government may safely and wisely be transferred to other hands. You will report to me on this subject, but will refrain from taking any steps regarding it without further instructions from me.

Fourthly: In the selection of persons to execute public trusts, you will be guided exclusively by the comparison of the claims which the different candidates may derive from past services, or from personal qualifications.

Fifthly: In general, you will not select for any public employment in Upper Canada any person who is not either a native or a settled inhabitant of the province. To this general rule occasional exceptions may be admitted; as in cases where some peculiar art or science is demanded, which no provincial candidate may be found to possess in the requisite degree. An exception must also be made in reference to those officers who are immediately attached to your own person, in the choice of whom His Majesty does not think it right to subject you to any such restriction.

Sixthly: As often as any office shall be vacant, which is not to be suppressed, and of which the annual emolument shall exceed £200, you will make the appointment provisional only, and with the distinct intimation to the party elected that his confirmation will depend entirely on the estimate which His Majesty may form of his pretensions; and you will on every such occasion signify to me, for His Majesty's information, the grounds on which you have proceeded, and the motives which have directed your choice. If His Majesty should be pleased to issue, under his sign-manual, a warrant authorizing you to make a grant of the office under the public seal of the province, then, and not till then, the appointment must be considered as finally ratified. I trust that in these regulations the House of Assembly will perceive a sufficient proof of His Majesty's settled purpose to exercise this branch of His prerogative for no other end than the general good of His Canadian subjects, and to prevent its being converted into an instrument of promoting any narrow, exclusive or party designs.

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3. Under the head of salaries and fees, the committee have entered into very copious statements, to show that the emoluments of the public officers in Upper Canada are excessive, and out of all just proportion to the value of the services rendered. It is unnecessary for me to enter into these details, because, as to the general principles on which it will be your duty to act on questions of this nature, there can be no room for controversy. Indeed, those principles will, I think, be most conveniently considered when divested of topics connected with the interests and the services of particular persons.

There is no measure of retrenchment, compatible with the just claims of His Majesty's various officers, and with the efficient discharge of the public service and duty, to which the King is not disposed to give a prompt and cheerful assent. To determine what ought to be the scale of remuneration to public

functionaries of different classes, would require information too minute and exact to be obtained beyond the limits of the province itself. This would appear a very fit subject for a special inquiry, in which it might be proper to employ commissioners, to be appointed under the authority of an act of the Assembly. I have reason to suppose that the subject has never yet undergone a full and fair investigation; and therefore I do not feel myself entitled to assume the non-existence of those abuses which so readily grow up under a system which is not subjected to a careful scrutiny, conducted upon permanent and enlightened views of public economy. Even if the result of the examination should be only to show that there is no evil of this nature to be remedied, the labour would be amply repaid, by placing so important a fact beyond the reach of all reasonable suspicion.

In dealing with existing interests, the local legislature will, I doubt not, be well disposed to adopt the rules which have been uniformly taken by Parliament for the guidance of their discretion in similar cases. The saving of public money which could arise from the unexpected reduction of official incomes, would not only subject numerous families to extreme distress, but by impairing general confidence in the public credit, would weaken the foundations on which all proprietary rights must ultimately repose.

The King confidently relies on his faithful subjects of Upper Canada, that they will not reduce His Majesty to the distressing alternative of either abandoning the just interests of any of his servants, or opposing himself to measures having for their object the reduction of public expenditure.

4. Next in the order of complaints, is that which relates to the amount of the pension list. On this, as on the subject which I have last noticed, I conceive that I shall better discharge my duty by attempting to provide against any future abuse, than by engaging in a minute retrospect of any which may have already occurred. . . .

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I do not anticipate that the Assembly of Upper Canada would wish to withhold from the King the means of rewarding faithful and zealous public services, or would think it desirable that no provision should ever be made by His Majesty to solace the declining years of those who have consumed in laborious public duties in the colony the larger portion of their lives.

You will therefore assent to any law which may be tendered for your acceptance, of which the object shall be to regulate, on a just and reasonable scale, the amount of the future pension list of Upper Canada, and to prescribe the principles upon which any pensions shall be granted.

5. . . . . .

The chief practical question, then, which at present demands consideration, is whether His Majesty should be advised to recommend to Parliament the assumption to itself of the office of deciding on the future appropriation of these lands. There are two distinct reasons, both of which appear to me conclusively to forbid that course of proceeding.

First: Parliamentary legislation on any subject of exclusively internal concern, in any British colony possessing a representative assembly, is as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception.

But important as is the question of the clergy reserves [1] in Upper Canada, yet I cannot find in the actual state of the question any such exigency as would vindicate the Imperial Legislature in transferring to themselves the settlement of this controversy. The conflict of opinion between the two Houses upon this subject, much as it is to be lamented, yet involves no urgent danger to the peace of society, and presents no insuperable impediment to the ordinary administration of public affairs. Although a geat evil, it is not such as to exclude every hope of mitigation by the natural progress of discussion, and by the influence of that spirit which, in public affairs, not seldom suggests to parties alike solicitous for the general good, some mutual surrender of extreme views, and some compromise on either side of differences which at first sight might have appeared irreconcilable. Until every prospect of adjusting this dispute within the province itself shall have been distinctly exhausted, the time for the interposition of Parliament will not have arrived, unless indeed both Houses shall concur in soliciting that interposition; in which event there would of course be an end to the constitutional objections already noticed.

[1] See, *inter alia*, Brymner, *Report on Canadian Archives* (1899); Appendix B, *Lord Durham's Report*

The second ground on which I think myself bound to abstain from advising His Majesty from referring this question immediately to Parliament, is, that the authors of the Constitutional Act have declared this to be one of those subjects, in regard to which the initiative is expressly reserved and recognized as falling within the peculiar province and the special cognizance of the local legislature, although its ultimate completion is no less distinctly made to depend, in addition to the ordinary submission to His Majesty, on the acquiescence of the Imperial Parliament.

It is not difficult to perceive the reasons which induced Parliament in 1791, to connect with a reservation of land for ecclesiastical purposes, the special delegation to the Council and Assembly of the right to vary that provision by any Bill, which being reserved for the signification of His Majesty's pleasure, should be communicated to both Houses of Parliament for six weeks before that decision was pronounced. Remembering, it should seem, how fertile a source of controversy ecclesiastical endowments had supplied throughout a large part of the Christian world, and how impossible it was to foretell with precision what might be the prevailing opinions and feelings of the Canadians on this subject at a future period, Parliament at once secured the means of making a systematic provision for a Protestant clergy, and took full precaution against the eventual inaptitude of that system to the more advanced stages of a society then in its infant state, and of which no human foresight could divine the more mature and settled judgment.

In the controversy, therefore, respecting ecclesiastical endowments, which at present divides the Canadian legislature, I find no unexpected element of agitation, the discovery of which demands a departure from the fixed principles of the constitution, but merely the fulfilment of the anticipations of Parliament in 1791, in the exhibition of that conflict of opinion for which the statute of that year may be said to have made a deliberate preparation. In referring the subject to the future Canadian legislature, the authors of the Constitutional Act must be supposed to have contemplated the crisis at which we have now arrived,—the era of warm and protracted debate, which in a free government may be said to be a necessary precursor to the settlement of any great principle of national policy. We must not have recourse to an extreme remedy, merely to avoid the embarrassment which is the present though temporary result of our own deliberate legislation.

I think, therefore, that to withdraw from the Canadian to the Imperial Legislature the question respecting the clergy reserves, would be an infringement of that cardinal principle of colonial government which forbids parliamentary interference, except in submission to an evident and well-established necessity.

Without expressing any further opinion at present on the general objects of the Bill of last session, I think the effect of that Bill would, as it appears, have been to constitute the Assembly not merely the arbiters respecting the disposal of the funds to be raised by the sale of these lands, but the active and independent agents in affecting those sales, and thus to invest them with the appropriate functions of the executive government.

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10. The withholding of public accounts from the House of Assembly is the next head of complaint.

It is proposed, that to remedy this evil a statute should be passed providing the time and manner of making such returns, and naming the officers who should render them to the legislature; "but," add the committee, "it is well known that such an enactment would fail in the Council, which has an interest in preventing the enforcement of practical accountability to the people."

Although I cannot permit myself to believe that the Council would really oppose themselves to any judicious measure of this kind, I fear that such legislation would be found to involve many serious, if not insuperable difficulties. I must object to the appointment of individuals for any purpose of this kind by name in a statute, or by any authority other than that of the King. Persons so appointed would exercise a control over all the functions of the executive government, and would have a right of inspecting the records of all public offices to such an extent as would leave His Majesty's representative, and all other public functionaries, little more than a dependent and subordinate authority. Further, such officers would be virtually irresponsible and independent.

On this subject, however, His Majesty commands me to state, that there is

no information connected with the receipt and expenditure of any part of the revenue of Upper Canada, which He wishes to withhold from the representatives of the Canadian people. You will, immediately on your arrival in the province, apprise the heads of every public department by which any such funds are received or administered, that they must constantly keep in preparation, to be produced to the Assembly, in compliance with any addresses which may be presented to you by that House, copies and abstracts of all public accounts; and you will consider in what form these can be drawn up, so as to exhibit all material information in the most complete and luminous manner. It will, perhaps, be possible to concert with the House beforehand some system for preparing such returns; and as often as they may present to you addresses for such information, you will promptly accede to their wishes, except in the extreme case, which it is difficult to suppose, of any demand of that nature being made in such a form that the compliance with it would endanger some great public interest.

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12. The next topic of complaint is, that many of the recommendations contained in Lord Ripon's despatch of the 8th November 1832, have not been carried into effect. Amongst these are especially mentioned such as relate to the amendment of the election laws, the non-interference of His Majesty's officers at elections, the disclosure to the House of the receipt and expenditure of the Crown revenue, the exclusion of ministers of religion from the Legislative and Executive Councils, the reducing the costs of elections, the judicial independence, and the limitation of the number of public officers who may sit in the Assembly.

Adhering, without reserve or qualification, to all the instructions issued under His Majesty's commands by Lord Ripon, the King is pleased to direct that you do adopt that despatch as a rule for the guidance of your own conduct; and that you exert your legitimate authority and influence to the utmost possible extent, to carry into effect all such of his Lordship's suggestions as may still continue unfulfilled.

13. The selection of justices of the peace is said to "have been made chiefly from persons of a peculiar bias in politics, and to be the means of extending the power and influence of the colonial system." It is not in my power to verify the accuracy of this opinion; and I am happy to feel myself relieved from the necessity of such an investigation. If any such abuse exists, it cannot be too promptly or decisively remedied. Whenever any increase of the number may appear to you desirable, you will propose to any gentleman in Upper Canada, possessing the necessary qualifications of knowledge, property and character, and unquestionable fidelity to the Sovereign, the assumption of the office of a justice of the peace, without reference to any political considerations.

14. A very considerable part of the report is devoted to the statement and illustration of the fact that the executive government of Upper Canada is virtually irresponsible; and the conclusion drawn from this statement is, that under the present system there can be no prospect of a good and faithful administration of public affairs.

Without entering on the one hand unnecessarily into a discussion of those general principles to which my attention is thus invited, or digressing, on the other hand, into personal topics, it is enough to me to observe on the present occasion, that experience would seem to prove that the administration of public affairs in Canada is by no means exempt from the control of a practical responsibility. To His Majesty and to Parliament the governor of Upper Canada is at all times most fully responsible for his official acts. That this responsibility is not merely nominal, but that His Majesty feels the most lively interest in the welfare of His Canadian subjects, and is ever anxious to devote a patient and laborious attention to any representations which they may address to Him, either through their representatives or as individuals, is proved not only by the whole tenor of the correspondence of my predecessors in this office, but by the despatch which I am now addressing to you. That the Imperial Parliament is not disposed to receive with inattention the representations of their Canadain fellow-subjects, is attested by the labours of the Committees which have been appointed by the House of Commons during the last few years to inquire into matters relating to those provinces.

It is the duty of the lieutenant-governor of Upper Canada to vindicate to the King and to Parliament every act of his administration. In the event of any representations being addressed to His Majesty upon the subject of your official

conduct, you will have the highest possible claim to a favourable construction; but the presumptions which may reasonably be formed in your behalf will never supersede a close examination how far they coincide with the real facts of each particular case which may be brought under discussion.

This responsibility to His Majesty and to Parliament is second to none which can be imposed on a public man, and it is one which it is in the power of the House of Assembly at any time, by address or petition, to bring into active operation.

I further unreservedly acknowledge that the principle of effective responsibility should pervade every department of your government; and for this reason, if for no other, I should hold that every public officer should depend on His Majesty's pleasure for the tenure of his office. If the head of any department should place himself in decided opposition to your policy, whether that opposition be avowed or latent, it will be his duty to resign his office into your hands, because the system of government cannot proceed with safety on any other principle than that of the cordial co-operation of its various members in the same general plans of promoting the public good. The inferior members of the different offices should consider neutrality on this great litigated question of provincial policy as at once their duty and their privilege. Diligently obeying all the lawful commands of their superiors, they will be exempted from censure if the course which they have been directed to pursue should issue in any unfortunate results.

Some of the members of the local government will also occasionally be representatives of the people in the Assembly, or will hold seats in the Legislative Council. As members of the local legislature they will of course act with fidelity to the public, advocating and supporting no measures which, upon a large view of the general interest, they shall not think it incumbent on them to advance. But if any such person shall find himself compelled by his sense of duty to counteract the policy pursued by you as head of the government, it must be distinctly understood that the immediate resignation of his office is expected of him; and that, failing such a resignation, he must, as a general rule, be suspended from it. Unless this course be pursued, it would be impossible to rescue the head of the government from the imputation of insincerity, or to conduct the administration of public affairs with the necessary firmness and decision.

I need hardly say, that in the event of any public officer being urged into a resignation of his place by his inability to give a conscientious support to his official superior, the merits of the question would undergo an investigation of more than common exactness by His Majesty's Ministers, and that His Majesty's decision would be pronounced with a perfect impartiality towards those who had the honour to serve him in the province, however high or however subordinate might be their respective stations.

By a steadfast adherence to these rules, I trust that an effective system of responsibility would be established throughout the whole body of public officers in Upper Canada, from the highest to the lowest, without the introduction of any new and hazardous schemes; and without recourse to any system, of which the prudence and safety have not been sufficiently ascertained by a long course of practical experience.

15. I next advert to two subjects of far more importance than any of those to which I have hitherto adverted: I refer to the demand made partly in the report of the committee, and partly in the address from the Assembly to His Majesty, for changes in the mode of appointing legislative councillors, and for the control by the Assembly of the territorial and casual revenues of the Crown.

On these subjects I am, to a considerable extent, relieved from the necessity of any particular investigation; because claims precisely identical have been preferred by the Assembly of Lower Canada, and because, in the instructions [1] to the commissioners of inquiry who have visited that province, I have already had occasion to state the views which have received His Majesty's deliberate sanction. The principles of government in the two sister provinces must, I am well aware, be in every material respect the same; I shall therefore annex for your information, as an appendix to this despatch, so much of the instructions to the Earl of Gosford and his colleagues as applies to these topics.

In the prosecution of the inquiries of the commissioners in Lower Canada, they will be instructed to enter into full and unreserved communication with you upon these questions, and to frame their report in such a manner as may

[1] See No. LXXXVII.

enable His Majesty to adopt a just and final conclusion upon the course to be pursued respecting them in both the Canadas. For this purpose you will supply the commissioners with all the information which you may think necessary for them to receive, and with every suggestion which you may think it expedient to make for their assistance in comparing the state of these questions in the two provinces. If it should ultimately appear desirable, the commission may perhaps be directed to resort to Upper Canada, there to pursue, in concurrence with yourself, a more exact inquiry into these subjects than they could institute at Quebec, in reference to the affairs of the upper province.

In general, the Earl of Gosford and his colleagues will be directed to enter into unreserved communication with you, not only on the points just mentioned, but on every subject of common interest to the two provinces. You on your part will conduct yourself towards them in the most cordial spirit of frankness and co-operation.

I have thus, in order, adverted to every subject to which the Assembly of Upper Canada have called the attention of His Majesty's Government. You will communicate to the Legislative Council, and to that House, the substance [1] of this despatch, as containing the answer which His Majesty is pleased to make to the addresses and representations which I have had the honour to lay before Him from the two Houses in their last session. I trust that in this answer they will find sufficient evidence of the earnest desire by which His Majesty's councils are animated to provide for the redress of every grievance, by which any class of His Majesty's Canadian subjects are affected.

I close this communication with the expression of my earnest hope, and I trust not too confident belief, that the representatives of the people of Upper Canada will receive with gratitude and cordiality this renewed proof of His Majesty's paternal solicitude for the welfare of His loyal subjects in that province; and that, laying aside all groundless distrusts, they will cheerfully co-operate with the King, and with you as His Majesty's representative, in advancing the prosperity of that interesting and valuable portion of the British empire.

I have, &c.

(Signed) GLENELG.

## LXXXIX

## EXTRACTS FROM PETITIONS OF HOUSE OF ASSEMBLY, LOWER CANADA, 1836 [2]

[Trans.: Christie, *op. cit.*]

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At the head of the reforms which we persist in considering as essential, is the introduction of the principle of popular election into the constitution of the Legislative Council. The people of the country, without distinction, regard this body, as at present constituted, as factitiously opposed to its institutions, its state of society, its feelings and its wants, and as having been and as being necessarily the stronghold of oppression and abuses. They continue in like manner to believe that any partial reform which shall stop short of the introduction of the elective principle, will be altogether insufficient, and will, as leaving the inherent vice untouched, bring back the same evils and the same collisions. We think, that with regard to the constantly baneful action of the Legislative Council, we have amply explained ourselves to your Majesty, and that no other proof than the past and present acts of that body is needed to remove all doubt as to the nature and spirit of the improvement to be introduced into it. We look, in this respect, upon the Act of 1791, giving Legislators for life to the Canadian Provinces, at the mere pleasure of the Executive authority, as an unfortunate experiment, followed by most unhappy consequences. We also look upon this experiment as entirely foreign to the British constitution. We regret that in the extracts from

[1] Head submitted a *copy* of these instructions to the legislature of Upper Canada (see his *Narrative*, p. 47, for his reasons for doing so). As a result, Gosford's work was severely hindered, and Papineau turned on him the same stream of abuse as he had poured on Aylmer. (See Kingsford, *History of Canada*, vol. ix, p. 618.)

[2] This document represents the final position of Papineau's party on the eve of the rebellion. It contains the earliest reference in exact terms to a responsible executive. The next document contains the resolutions of the house of assembly on which it was founded.

the Despatches we have mentioned,[1] an attempt is made by begging the question to infer an analogy which does not exist, for the purpose of aggravating certain specious objections against an elective Council. We would respectfully pray your Majesty to remark, that the influence which prevailed in the Councils of the Empire, at the period when the Act of 1791 was passed, was calculated to give an undue preponderance to the aristocratic principle, while in America, the independent state and the progress of society, repelled any doctrine of this nature, and demanded the extension of the contrary principle. We must also express our regret, that, while your Majesty's representative in this Province has solicited the co-operation of the two Houses of the Provincial Legislature to labour at the reform of abuses, and while this House is fully disposed to grant that co-operation, the constant opposition of the Legislative Council is of a nature to prevent so important an appeal from being followed by any result. For ourselves, we are conscious that we have ever been, and are still guided in our labours by our conviction of what was for the greatest advantage of the people, and best adapted to cause your Majesty's Government in this Province to be respected, cherished and strengthened; and firm in our determination to pursue the same course, we pray your Majesty to believe that we shall not depart from it.

Respecting as we do the expression of the Royal pleasure, we yet regret that the Ministers of the Crown should have declared that your Majesty was most unwilling to admit that the question of an elective Legislative Council was a subject open to debate in this Province. We beg to be permitted to represent to your Majesty, that it is not within the province of the Colonial Secretary to limit the subjects which are to engage the attention of this House and the people it represents, within the required forms, and with the view of improving the laws and condition of the Province. Against this infringement of the liberties of the subject, by one of your Majesty's responsible servants, we dare to appeal to the supreme authority of the Empire, to that of your Majesty, sitting in your high Court of Parliament.

We do not intend to discuss the historical points of English colonial government, on which we venture to differ from your Majesty's ministers. Time has solved the problem, and we firmly believe that those happy countries to which these questions refer, would never have attained the degree of prosperity which they now enjoy, either under the old colonial government, or under a system like that which successive colonial ministers have established and maintained in this colony.

On the subject of the Executive Council, we abstain from entering on any details, because we hold this question to be closely connected in practice with the other more important subjects of colonial policy. We shall confine ourselves to saying, that the full and entire recognition of the rights of this House and of the people, by those whom your Majesty may be pleased to call to your Councils, and their constitutional responsibility based upon the practice of the United Kingdom, will be essential motives for confidence in your Majesty's government.

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On the subject of the independence of the Judges, we see with pleasure that there exists no difference between the views of His Majesty's Government and our own. We regret that we were mistaken in our efforts to carry them into effect. Since that time the modifications which have rendered the character of the Legislative Council worse, while it was pretended to make it better, have convinced us that it would be of no advantage to the due administration of justice, to proceed on the same basis. We shall not, however, abandon the consideration of the subject, and we shall attentively examine any plan which shall appear to us well adapted for the attainment of the desired end.

What we have now said will suffice to show your Majesty what our views are, with regard to the politics of the colony as a whole, to the functions and powers which we believe to belong to the Provincial Legislature on all matters relative to the internal affairs of the colony, and with regard to what we conceive to be the best means of ensuring activity, efficiency and responsibility in the public service. We would suggest to your Majesty, that there are on this portion of the American Continent, more than a million of your Majesty's subjects, composing the Colonies of Upper and Lower Canada, who, speaking different languages, and having a great diversity of origin, laws, creeds and manners, charac-

[1] These instructions were made public by sir Francis Head, the lieutenant-governor of Upper Canada, and communicated to Papineau by Bidwell, speaker of the Upper Canadian legislature.

teristics peculiar to them respectively, and which they have severally the right to preserve as a separate and distinct people, have yet come to the conclusion that the institutions common to the two countries ought to be essentially modified, and that it has become urgently necessary to reform the abuses which have, up to this day, prevailed in the administration of the Government. We rejoice that we have, in our just claims, the support of our brethren of Upper Canada. This support will render manifest to your Majesty and to our fellow subjects in all parts of the Empire, that we have been sincere in our declarations, that the circumstances and wants of the two Canadian Provinces do indeed require a responsible and popular government, and that we have been actuated by no narrow views of party or of origin in repeating to your Majesty for many years, our prayer that such a Government may be granted to us.

With regard to the protection and to the equality of the rights which your Majesty's Canadian subjects are entitled to, the remedy of evils and abuses, the abolition of sinecures and pluralities, the expected formation of an Executive Council on the principles we have set forth, and to divers other subjects more particularly mentioned in the Speech from the Throne at the opening of the present Session, we refer to the answer to His Excellency the Governor in Chief, and we ardently wish that the views and instructions of your Majesty's Government, on the essential points, may be of a nature to facilitate the results which your Majesty's Representative has been pleased to promise, and which it will afford us the most lively satisfaction to see attained.

In the extracts from despatches hereinbefore cited, there are certain passages which induce us to believe that we have not made ourselves understood by your Majesty's Government, with regard to the nature of the control we desire for the Provincial Legislature over the waste lands on the public domain of the Province, and which might cause some apprehension in the opinion of our fellow subjects. We have never claimed to exercise over this portion of the affairs of the Government, any other authority than the parliamentary and constitutional authority which we are entitled to exercise over all the other affairs of the country in so far as the peace, welfare and good government of the country may be therein concerned. We have also set forth at length our reasons for believing that this authority belongs to us. On this head, as on all others, our wish is that the due execution of the laws may remain in the hands of the Executive authorities, within the limits prescribed by the laws and the constitution, and under the necessary responsibility; but we also wish that the right of the Assembly of the Province to legislate on these subjects, jointly with the other branches of the Legislature, and to exercise in this behalf the other powers of the Commons of the country, may receive its full application.

It remains for us to address your Majesty on this important and extensive subject,—the public revenue and expenditure of this Province. We humbly thank your Majesty for the gracious declaration, that your Majesty is disposed to admit the control of the Representatives of the people over the whole public Revenue in this Province. We regard the fulfilment of this promise as of the highest importance. In stating explicity in the preceding portions of the Address, the rights which we humbly believe to belong to the Legislature of this Province, with regard to certain parts of this Revenue, we wish to present the subject in its true point of view, in order that no misconception may hereafter retard the desired result. In the proposals which it may please Your Majesty to make to us for the purpose of attaining this result, it is impossible that your Majesty should lose sight of the essential principles of the Constitution, or of the declaratory Act of 1778,[1] to the benefit of which we believe the people of this country are peculiarly entitled. We shall receive with respect, and examine with the most scrupulous attention any communication which Your Majesty may be pleased to make to us, tending to the settlement of the financial questions. We believe, however, that any merely temporary arrangement, made as a matter of expediency, and not carrying with it the recognition of the principles we have supported, could not have the desired effect, but would sooner or later bring back the very difficulties with which we are now contending. We humbly represent to Your Majesty, that the people of this Province, tired of the continued struggle in which they have been so long engaged to obtain the recognition of their rights on the part of the Metropolitan and Colonial authorities, would regard with painful apprehension the possibility of the recurrence of the same state of things,

[1] See No. XXXIX.

and of the necessity of making new sacrifices for the purpose of laying these complaints before Your Majesty and Parliament. We wish for a Government which shall assure us freedom and security; the unrestricted effect of Your Majesty's declarations can alone confer it on us; and it will be when we possess it, and can entertain a hope of the removal of grievances and abuses we complain of, that we can properly seek the means of giving effect to Your Majesty's wishes with regard to an appropriation of a permanent nature. With respect to the extension of any appropriation of this nature beyond what we have hitherto thought to be reasonable, it will be impossible for us to take the subject into consideration until after the views of Your Majesty's Government, with regard to the details, shall have been made known to us. We must, however, declare that having represented to your Majesty our views with regard to the efficiency and responsibility which we wish to see established in the Provincial Government, we should think we failed in our duty to our constituents if we destroyed that efficiency and that responsibility, by placing, as a general rule, the great public functionaries of the province, beyond the reach of the wholesome action of the constitution. We are not actuated by any merely pecuniary motive; we believe that the largest sums Your Majesty's Government could ask for, would be utterly insignificant in comparison with those for which Your Majesty's servants in this province have been defaulters, or the enormous sums expended out of the public revenue, without the authority of the Provincial Legislature, and even in opposition to the votes of this House; or in comparison with the waste of the public property, by which four millions of acres of land or more, scarcely an eighth part of which has yet been settled, have been monopolized or alienated. But we earnestly desire to preserve the benefit of a just control on the part of the Legislature over the several branches of the Provincial Executive, and we can never consent by renouncing it, to confound all the powers of the state for time to come.

Having thus rendered manifest our opinions on the essential points of the extracts from despatches which have come to our knowledge, we refer on all other points, to our humble petition to Your Majesty and your Parliament of the 1st of March, 1834, and the 21st February, 1835, in which we persevere—We beg leave to call Your Majesty's royal attention to the essential reforms we have pointed out in the former part of this address, and which we believe to be indispensably necessary. Declaring ourselves unsatisfied with the views and intentions of Your Majesty's ministers, we address ourselves to Your Majesty and to your Parliament, in order that our just claims may be listened to, and that Your Majesty's government in this province may forthwith become a constitutional and responsible government, and one possessing the confidence of your faithful subjects.

We have frequently regretted that the destinies of the inhabitants of this portion of the British Empire should depend almost solely on a Colonial Minister acting on the other side of the ocean, and for the most part on incorrect data and an imperfect knowledge of facts.

We expect full justice from the august tribunal to which we appeal, and we trust that the Provincial Parliament will be so called together for its next session as to enable us to continue as early as possible our labours for the welfare of the country, and, reassured by the measures we expect, to consider the means of finally arranging the difficulties which subsist in the Government of this Province, and of giving strength, stability and public confidence to Your Majesty's government therein.

Wherefore we respectfully entreat Your Majesty to listen favorably to our humble prayers, and as well by the exercise of the august powers which belong more especially to Your Majesty as jointly with the Parliament of the United Kingdom, to render full justice to your faithful subjects, and to deliver them from the system of oppression and bad government which the Colonial Ministers have long made to press heavily upon them. And by inclination led, as well as by duty bound, we shall ever pray for Your Majesty's sacred person.

## XC

## RESOLUTIONS OF HOUSE OF LOWER CANADA, 1836

[Trans.: Christie, *op. cit.*]

Resolved, That it is the opinion of this Committee, that this House, in its exertions to procure a redress of the various grievances under which the people of this Province labour, and to introduce a good and responsible system of local government, have, in addition to the other weighty and substantial reasons by which it has been guided, been greatly encouraged by the hope and expectations that any amelioration in the political institutions of the colony would be followed, of right, by similar advantages to our brethren inhabiting the sister Provinces of British North America.

Resolved, That it is the opinion of this committee, that the political reforms which this House and the good people of this Province have been for a great many years endeavouring to obtain, have at various epochs been explained by the votes, resolutions and addresses of this House, and by the petitions of the people themselves. That the principal object of those reforms is:—To render the Executive Council of this Province directly responsible to the representatives of the people, in conformity with the principles and practice of the British Constitution as they obtain in the United Kingdom; to extend the principle of election to the Legislative Council, which branch of the Provincial Legislature has hitherto proved, by reason of its independence of the people, and of its imperfect and vicious constitution insufficient to perform the functions for which it was originally designed; to place under the constitutional and salutary control of this House the whole of the revenues levied in this Province from whatever source arising; to abolish pluralities, or the cumulation in one person of several or incompatible offices; to procure the repeal of certain statutes passed by the Imperial Parliament, in which the people of this Province are not and cannot be represented, which acts are an infringement of the rights and privileges of the Legislature of this colony, and are injurious to the interests of the people thereof; to obtain over the internal affairs of this Province, and over the management and settlement of the wild lands thereof (for the advantage and benefit of all classes of His Majesty's subjects therein without distinction), that wholesome and necessary control which springs from the principles of the Constitution itself, and of right belongs to the Legislature, and more particularly to this House as the representatives of the people; which reforms are specially calculated to promote the happiness of His Majesty's subjects in this Province; to draw more close the ties which attach the colony to the British empire, and can in no way prejudice or injure the interests of any of the sister Provinces.

Resolved, That it is the opinion of this Committee, that it has long been the aim of the enemies of these colonies, by deliberate and unfounded misrepresentations to engender dissensions and bad feelings between the people thereof, in the hope of preventing all union of purpose among the said people, and of thereby preventing the reform of those many abuses and evils of which the people have so frequently complained, and which are connived at or upheld for the advantage of a minority hitherto unjustly possessing, and still endeavoring to maintain, a political ascendency in this Province, contrary to the principles of all good government.

Resolved, That it is the opinion of this Committee, that this House has seen with extreme concern, a speech delivered at the opening of the present session of the Legislature of Upper Canada, by His Excellency Sir John Colborne, late Lieutenant Governor of that Province, at a moment when his sudden recall reflected particularly on the merits of his administration, in which it is stated that the affairs of this Province had exercised an injurious influence on the interests of Upper Canada—had tended apparently to discourage emigration and the transfer of capital to that country, and had acted disadvantageously in respect to the terms on which the large loan authorized by the legislature of the province was recently negotiated in England; that such a statement is calculated to misrepresent the views of this House -to prejudice the people of those Provinces against each other—to disturb that good understanding which ought to prevail, and which has hitherto prevailed between the said people;

and in place thereof to sow discord and animosity among the several classes of His Majesty's subjects in these Provinces.

Resolved, That it is the opinion of this Committee, that strong in the rectitude of their intentions and principles, and moved alone by a desire to introduce order and responsibility into their political institutions, in the place of the disorder and abuses which now unhappily prevail, this House and the people whom it represents, indignantly repudiate all design to injure the interests or embarrass the exertions of the people of Upper Canada, in whose welfare the people of this Province feel a lively interest, and for whose patriotic exertions to improve their political and social conditions, this House entertains a sincere respect, and this House is gratified to perceive that the representatives of the sister province have done this house the justice to acquit it of being the cause of any dissensions or embarrassments existing in the country; and this House firmly repeats that those dissensions and embarrassments proceed from the defective constitution of the Legislative Council of these colonies, and from the continued unconstitutional exercise by the same persons of executive, legislative and judicial functions, from which causes have resulted the abuses of which the people have so long and so justly complained.

Resolved, That the Speaker of this House be authorized to transmit copies of the foregoing resolutions to the Speakers of the several Assemblies of Upper Canada,[1] and of the other sister Provinces, and to express the desire of this house cordially to co-operate with the said Assemblies in all constitutional measures calculated to promote the mutual interests of these colonies.

## XCI

## GLENELG TO GOSFORD

[Trans.: Christie, *op. cit.*]

Downing Street,
7th June, 1836.

My Lord,—His Majesty having had under his consideration the Address of the House of General Assembly of Lower Canada,[2] on the state of public affairs in that Province, has commanded me to convey to the House, through Your Lordship, the following answer:

"The King contemplates with deep regret the ill success of His Majesty's efforts to remove from the minds of the Representatives of the people of Lower Canada, those distrusts and jealousies with which they appear unfortunately to have been affected. Conscious, however, that His measures have been dictated by an earnest solicitude for the welfare of all classes of His Canadian Subjects, unmixed with any motive of a less just and liberal character, His Majesty awaits with tranquillity the result of this long and painful discussion, assured that when the misconceptions of the moment shall have passed away, His labours for the prosperity of Lower Canada, will be repaid by the confidence of the inhabitants of that Province, of whatever class or national origin."

His Majesty is sustained and encouraged in these hopes by observing that the House of Assembly were led to grant the supplies only for six months, and to prefer their present complaints, apparently in consequence of the publication of some detached passages from my Despatch of the 17th of last July,[3] on which passages the House have founded the remark "that the researches authorized by his Majesty for the purpose of ascertaining the means of doing justice to His Canadian Subjects, were on several of the most essential points, limited by pre-conceived opinions and anticipated decisions."

This supposition, even if it had received any countenance from the isolated extracts from my instructions to you and your colleagues in the Canada Commission, which were brought under the notice of the House of Assembly, would have been entirely removed if the House had been in possession of the whole of those instructions. They would have found not only that the general tenor of those Instructions favoured an entire freedom of inquiry and judgment by the Commissioners, but that the most unequivocal language had been studiously

[1] This appeal did not produce the desired result. After being entered on the journals of the house of assembly in Upper Canada it was expunged by the succeeding assembly.

[2] No. LXXXIX.

[3] See No. LXXXVII.

employed for the express purpose of counteracting the opposite opinion. I know not how it would have been possible to have expressed His Majesty's gracious intentions in terms stronger or more unambiguous. In my Despatch of the 17th July last, I stated that, "although your duty as Commissioners would be exclusively to inquire, of that duty you were placed under no restrictions excepting such as the necessity of the case, or your own judgments might prescribe."

I concluded my instructions by disclaiming "the remotest intention of fettering your discretion, or of restricting in any degree the exercise of your own judgments, either as to the subjects of inquiry, or the opinions at which you may arrive." I observed that in the course of your investigation new topics would occur to you, and new views of topics already familiar would present themselves. "You will not," I added, "on any occasion, or for any reason, shrink from the explicit declaration of your sentiments. You will not decline any inquiry, the prosecution of which may promise benefit to the Colony or to the Mother Country."

If the whole of my despatch of the 17th July had been before the House of Assembly, they would have found in these and in other passages, a sufficient disproof of the supposition that your inquiry was limited by any pre-conceived opinions or anticipated decisions.

It is indeed true that, in approaching this subject, I recorded reasons which strongly enforce the closest possible adherence to the existing Constitution of Provincial Government. In every part of His extensive dominions, it has been the constant object of His Majesty to correct real abuses, and to introduce such improvements as the existing state of society, and the deliberate voice of Public opinion have appeared to demand. But to reconcile necessary changes with the stability of political and social institutions has been no less an object with His Majesty. At once to reform in the spirit of the Constitution, and to oppose changes conceived in a contrary spirit, is a duty which the King will never shrink from avowing his intention to fulfil.

In conformity with this rule you were directed to "apply yourselves to the investigation of this part of the general subject, endeavouring to ascertain how far the Legislative Council has really answered the original objects of its institution, and considering of what amendments it may be susceptible." You were also informed that when your "Report should have been received, His Majesty would take into his most serious consideration the question whether there are any amendments in the law on this subject, which it would be fit to propose for the consideration of the Imperial Legislature, and which, being founded on the principles and conceived in the spirit of the Act of 1791, may be calculated to render the practical operation of that statute more conformable to the wishes and intentions of its framers."

If it be enquired what definite meaning is to be attached to the terms which I have thus employed, I answer that the principle of the Constitution of 1791 is, that there shall be two distinct and independent Houses of Legislature. Adhering to this general principle, it remains for your lordship and your colleagues, acting on the instructions addressed to you as Commissioners, to inquire how the most effectual means can be taken for securing such a Legislative Council as shall enjoy at once a due share of public confidence, and a full exercise of an enlightened and independent judgment on all matters submitted for its consideration.

The fears of some and the hopes of others, have placed a more narrow construction on the extracts of my Despatch of the 17th July. In disavowing that meaning I make no concession, but simply adhere to the views which I was honored by his Majesty's commands, to express before. Such as the intentions of His Majesty's confidential advisers were on this subject in July last, such they still continue.

The Address further advances a complaint connected with the Executive Government of Lower Canada, a complaint which does not find a place either in the 92 resolutions of 1834 or in any of the earlier Addresses or votes of the House of Assembly. The house now, however, state the necessity of establishing in the Province what is termed "a responsible and popular government." [1]

Understanding these expressions in their obvious sense, His Majesty is happy to declare that they do not advance beyond the principles by which it is His pleasure and command that the Executive Government of Lower Canada should

[1] See No. XC.

be administered. It is His Majesty's desire and injunction that full and early explanations should be afforded to the Representatives of the people, of all important measures adopted by the government; that the Assembly should enjoy the most ample opportunity of explaining both to the King himself, and to His Majesty's Representative, in the Province, their opinions and their wishes respecting every such measure; that the imputed misconduct of any public officer, with the exception of His Majesty's Representative, the Governor, who must be responsible directly to the King and the Imperial Parliament, should be closely and impartially investigated, that means should be devised for bringing to trial and punishment within the Province itself, every such officer to whose charge any malversation in office may be laid; and that effectual security should be taken for the zealous co-operation of all subordinate officers in every measure advised by the Legislature and sanctioned by the King for the general welfare of His Majesty's subjects.

The Address of the Assembly calls upon His Majesty to recommend to Parliament the repeal of the British statute respecting the tenures of land in Lower Canada. If the House had been in possession of my Despatch of the 17th July, they would probably have waived this application. They would have been aware that the reluctance of the King, to recommend to Parliament any measure which could be plausibly represented as an unnecessary interference with the internal affairs of the Province, is the single obstacle to the introduction of a Bill on that subject.

The Address proceeds to demand the repeal of the Act and the revocation of the Charter under which the British North American Land Company is incorporated, and the resumption of the lands which have been sold to them. I shall not, I trust, be thought forgetful of what is due to the privileges and dignity of the House, if I do not shrink from the avowal of any opinion deliberately entertained by the Ministers of the Crown, though it be not in accordance with the sentiments of the Representatives of the Canadian people; I must, therefore, state that His Majesty's Government cannot proceed to the consideration of the questions raised by the Assembly respecting the British North American Land Company, unless it can first be established in due course of law that the claim of the Company to their corporate character and to their lands is invalid. No considerations however urgent, of temporary or apparent expediency, not even the desire to conciliate the good will of the Assembly of Lower Canada—than which no motive can be of greater weight,—could reconcile His Majesty to a measure, the principle of which would endanger the foundation of all proprietary titles, and all social rights.

The remaining topics embraced in the Address require, on the present occasion, no very lengthened notice, because when attentively considered, that document does not appear to advance any principle respecting them essentially different from those which are admitted or maintained in my Despatch of the 17th of July.

Respecting Judicial independence, the Assembly frankly admit the entire coincidence between the opinions of His Majesty's Ministers and their own.

With regard to the settlement and management of the uncleared lands, and to all questions of finance, I trust I am not mistaken in supposing that no essential difference in principle exists between the sentiments contained in the Address, and those expressed in my despatch of the 17th July.

And now, referring to the preceding remarks, I conceive myself entitled to state, that there did not exist during the last Session any real or substantial difference of opinion between the Ministers of the Crown and the House of Assembly, on any question regarding which His Majesty's Government felt at liberty to take any immediate proceedings. No single complaint had been alleged which had not been either promptly removed, or made the subject of impartial inquiry. No maladministration of the affairs of the Province was imputed to your Lordship. Without any actual controversy with the Executive Government, the House, however, declined a compliance with the proposition to provide for the arrears and for the supplies pending the inquiry. His Majesty does not deny that this is a power which the law has entrusted to the representatives of the people. But he cannot admit that, on the present occasion, the recourse to the exercise of that power can be attributed to any indisposition on the part of His Majesty to accord the fullest measure of justice to His Canadian subjects. On a review of all the circumstances of the case, His Majesty's Government are led to the conclusion, that the course pursued by the House is to be ascribed to

the misapprehension of the tenor of your Lordship's instructions, induced by the publication of a few detached passages from them. Your Lordship will, therefore, communicate to the House a complete copy of those instructions, and will renew your application for the arrears now due to the public officers, and for the funds necessary to carry on His Majesty's service,

I have the honor to be, my Lord,
Your most obedient servant,
(Signed) GLENELG.

## XCII

## ROBERT BALDWIN TO GLENELG, 1836

[Trans.: *Report of Canadian Archives*, 1923.]

4 Trinity Court, Charing Cross
13th July 1836.

My Lord,

I have to acknowledge the receipt of a Letter from Mr. Stephen in reply to mine of the 20th ulto. requesting the honor of an interview with Your Lordship, on the public and private grounds referred to in my former Letter.—

As Your Lordship does not deem it adviseable to accede to my request for a personal interview, I will not trespass on Your Lordship's time by any further reference to myself, or the injustice which I, and indeed all my late Colleagues, have reason to complain of having received at the hands of the Lieutenant Governor—More than enough is already before Your Lordship to place this in a very strong light—Your Lordship I feel assured cannot approve of the conduct of Sir Francis Head, however necessary you may imagine it to be, not publicly to condemn it; and I can personally have no desire to pursue the subject; I will only take the liberty of assuring Your Lordship, that as it was no desire of place that induced me to accept the seat pressed upon me by Sir Francis Head, nothing but a desire of justifying myself to the Government, under which I was born, and to which I am both by duty and affection still most warmly attached, could, as far as I am myself personally concerned, have induced me to trespass on Your Lordship by the request.—I shall take it for granted however that Your Lordship will do us the justice to point out any particular in our conduct on the late occasion, which in your estimation may appear culpable, or such as to call for further explanation.

But my Lord I am deeply impressed with the responsibility which the present state of Upper Canada necessarily throws upon every man connected with it—As my native Country its prosperity is necessarily to be an object of the most intense Anxiety.—Educated in the warmest attachment to the monarchical form of Government, believing it to be best adapted to secure the happiness of the people, and fully sensible that it can be maintained in Upper Canada only by means of the connexion with the Mother Country, I have always been most earnestly anxious for the continuation of that Connexion: I believe it to be now endangered. I sincerely believe the crisis to have arrived, which is to decide the ultimate destiny of Upper Canada as a dependancy of the British Crown.—I feel therefore that it would be criminal in me to refuse compliance with Your Lordship's request to communicate with you in writing on the subject of the present state of that Province, and the events which have recently taken place there—At the same time I cannot but feel, that altho' there may be some advantage in this mode of communication where Principles are merely to be laid down; they are more than counterbalanced by the disadvantages attendant upon it, where principles are not only to be laid down, but discussed, and the details connected with them, and the political situation of a country in a state of high and dangerous excitement, to be enlarged upon, and disposed of.—

I shall however as clearly as I can, state to Your Lordship my view of the present state of the Province, with reference to the principle contended for in the recent memorial from the House of Assembly, to the Imperial House of Commons, and the value and importance of that principle in producing harmony among the several Branches of the Provincial Legislature, and inspiring the people with confidence in the Home and Provincial Governments and will conclude with most respectfully submitting my opinion as to the course which,

with all deference for the opinion of others, it appears to me absolutely necessary should be promptly taken for preserving the connexion of the Colony with the Mother Country.—

If it is the desire of the Mother Country, which I of course assume it to be, to retain the Colony it can only be done either by force, or with the consent of the People of Upper Canada themselves. I take it for granted that Great Britain cannot desire to exercise a Government of the sword, and that she will therefore only govern the Canadas so long as she can do so with the concurrence of the People—For the purpose therefore of continuing the connexion upon this footing it is absolutely necessary; First—That the political machinery of the Provincial Government should be such, as shall work harmoniously within itself, without collision between any of its great wheels; And secondly, That it should be such as that the People may feel that they have an influence upon it sufficiently powerful to secure attention, not only to their abstract rights, but to their feelings and Prejudices; without regard to these you can govern no people satisfactorily or successfully—That the Constitution of Upper Canada administered upon the principles heretofore applied to it, has failed to accomplish either of these objects a very cursory view of the history of the Colony, without reference to Your Lordship's late dispatch, will sufficiently demonstrate.—It may however be well to state that the differences alluded to are of a much earlier date than appears to be generally known in this Country, or until lately to have been recollected even in the department over which Your Lordship presides. As early as in the Provincial Parliament of 1820 an opposition respectable if not formidable both in talents, and numbers existed,—some of the leading Members of which not only expressed their entire want of confidence in the Provincial Executive, but adopted the principle now contended for as a part of their political creed, and assumed it as necessarily pertaining as much to the provincial Constitution as to that of the Mother Country.—During the whole of that Parliament however the opposition were generally in a minority.—In the parliament of 1824 and in that of 1828 the Executive were uniformly in an inconsiderable minority.—In that of 1830, owing to Circumstances to which it is not worth while now to allude the Executive obtained a Majority; but in that [of] 1834 they were again in a minority; so that taking the twelve Years from 1824 to 1836, the Provincial Executive have been in the minority for eight Years and three Parliaments, and have had a Majority only for four Years and one Parliament; during the whole of this time also the House of Assembly were constantly passing Bills which the Legislative Council as uniformly threw out. As therefore the present Constitution administered, upon the principles heretofore applied to it, has failed in both particulars, I mean in working smoothly itself or satisfying the People, it necessarily follows that something must be done to accomplish the objects desired.—To this end four remedies have been proposed; first to make the Legislative Council elective; Secondly, to abolish it; Thirdly to concede certain isolated points, which have been earnestly called for by the Representatives of the People, and fourthly, to put the Executive Council permanently upon the footing of a local Provincial Cabinet, holding the same relative position with reference to the representative of the King and the Provincial Parliament, as that on which the King's Imperial Cabinet stands with respect to the King and the Parliament of the Empire, and applying to such provincial Cabinet both with respect to their appointment to, and continuation in, office the same principles as those which are acted upon by His Majesty with respect to the Imperial Cabinet in this Country.—

The two first remedies, if not inexpedient, I look upon as at least wholly insufficient to accomplish the objects desired:—the third, as equally insufficient of itself to do so; and the last as the only remedy by the application of which those objects can be attained and upper Canada preserved to the Mother Country—

First, the making the Legislative Council elective I look upon as inexpedient; among other reasons because I am of opinion that the institutions of every Colony ought as nearly as possible to correspond with those of the Mother Country—The Upper House of the Imperial Parliament not being elective I would therefore not have the Upper House of the Provincial Parliament elective unless under the pressure of an absolute necessity.—I moreover disapprove of the adoption of such a measure at all events at present,—because it is as a general principle inexpedient to make an alteration in the forms of the constitution of

any Country, until the necessity for such change has been demonstrated, by putting into full and efficient operation, the existing constitution in all its details; which cannot be said to have been done with that of Upper Canada, until the Executive Council is practically converted into a provincial Cabinet for the local and internal Affairs of the Province:—Had this been done ten or twelve Years ago when the Executive first found themselves in a decided and uniform minority in the Provincial Parliament, I am satisfied that an elective legislative Council would not now have been thought of, and I am not without hopes, although they may prove fallacious, that it is not yet too late by the adoption of this principle to render such change in the constitution unnecessary. But at all events as a remedy amounting merely to the application of an English principle to the constitution as it stands, it ought yet to be tried fully and fairly, previous to resorting to the more violent measure of a legislative change in the Charter. It is but right however to inform Your Lordship that altho' my opinion of the inexpediency of such a change in the organization of the Legislative Council is concurred in by many I believe, a considerable majority of the Reformers of the Province (which every day's delay is increasing) think that such a change will ultimately be found necessary.—After the intimation contained in Your Lordship's dispatch and out of regard to the opinions entertained by us, who in this point differ from them, they were however willing to drop the question of an elective Legislative Council until the Constitution as it is should have been fully and fairly tested by the application of those principles which have been found so valuable and so necessary in the successful working of that of the Mother Country;—And whatever may be the opinion entertained as to the expediency or inexpediency of making the Legislative Council elective I believe no doubt exists of such change being found wholly insufficient of itself to accomplish the two objects desired—The making the legislative Council elective might convert that body into an additional engine of hostility against the executive Government, but could never supersede the necessity for the concession of the Principle contended for.—Resistance to the concession of this Principle may drive the Reformers into Unanimity in the call for an Elective legislative Council, but it will only be as a means and not as an end—And when this state of things arrives, be assured that England will have lost the last hold upon the *Affections* of the great mass of the people of Upper Canada—That such change in the constitution of the Legislative Council would not be found to produce harmony between the three branches of the Provincial Government, will be readily admitted when it is remembered that the Collision which has produced so much evil has not been merely between the Representative Branch of the Government and the Legislative Council, but between the Representative Branch and the Executive Government; the complaint has always been of the influence of the Executive upon the Legislative Council, and not of the influence—of the Legislative Council upon the Executive Government.—It were idle therefore to expect unanimity while you leave untouched the main source of discord.

Secondly—To the proposal to abolish the Legislative Council altogether, most of the reasons against making it elective will equally apply: it may in addition be urged that a second chamber of some kind has, at least in modern constitutional legislation, been deemed essential to good Government; It has not been dispensed with in any of the new constitutions of any of the neighbouring Republics; and has I believe in more instances than one been not long since adopted as an improvement to the political machinery of Government where the previous constitution had contained no such provision. And moreover, the abolition of the Legislative Council has not been asked for, by any portion of the Canadian People.—

As to the third remedy proposed, that of conceding certain isolated points as they arise, and are called for; I will only say, that the whole history, not only of the Canadas but of the Colonies in general shews that such course as a means of producing permanent satisfaction and harmony, has wholly failed; nor indeed does it appear to me to require much consideration to convince any one of the insufficiency of this as a permanent remedy—In the first place such concessions are never made, and under the present system never will be made, until after such a prolonged struggle, that when they come, they are always felt to have been wrung from the Government, and not to have proceeded from a sense of justice or expediency of granting them.—They never remove the distrust which is felt of the Provincial Executive Government.—They leave untouched

the great evil of the disadvantageous comparison which is constantly before the eyes of the people when they look at the administration of the Imperial Government by the King, and that of the Provincial Government by his representative—They see the former always so far consulting the wishes of his people as never to keep in his Councils persons who have not the confidence of their Representatives; while in the administration of their own Government they see the mere Representative of that Sovereign constantly surrounded by those very individuals, of whom sometimes with reason, and perhaps sometimes without they have become distrustful and jealous: And they very naturally ask the question, why are not our Representatives to be paid as much attention to by the King's Deputy, as the Representatives of our fellow Subjects in England by the King himself?—Astute reasonings may no doubt be framed, and fine distinctions drawn upon the subject but this is a plain common sense and practical view of it; out of which be assured it will be impossible ultimately to persuade the Yeomanry of Upper Canada—You may indeed, by strenuously insisting on the inapplicability of this principle to their situation, drive them to insist on a more extended system of elective institutions.—By refusing what no one can deny to be an English principle;—the same upon which Your Lordship, and Your Colleagues were selected to fill the high and important situations which you hold in His Majesty's Councils; the same by which you at this moment continue to retain those places,—you may indeed divert their attention to another Quarter, and drive them to call for the power of electing their own Governor, and their own Executive; but you never can persuade them to abandon the object of obtaining more influence than they now possess, through their Representatives, in the administration of the Executive Government of the Colony.—

I now come to the consideration of the fourth remedy, which consists of nothing more than having the provincial Government as far as regards the internal affairs of the Province, conducted by the Lieutenant Governor (as Representative of the paramount Authority of the Mother Country) with the advice and assistance of the Executive Council, acting as a Provincial Cabinet, and composed of Men possessed of the public confidence, whose opinions and policy would be in harmony with the opinions and policy of the Representatives of the People. This, as I have before said, I look upon not only as an efficient remedy, but as the only efficient one that can be applied to the evils under which the Province is at present suffering.—

I shall avoid troubling Your Lordship with any observations upon the construction of the Constitutional Act; because not only has the subject been already fully entered into, in the Report of the Select Committee of the House of Assembly; but I sincerely believe matters to have arrived at that point when it really signifies nothing whether it be or be not *required* by the Charter. The only question worth discussing is, whether it is or is not *expedient* that the principle should be applied to it: And for this purpose all that it is necessary to ascertain in the first instance is, that there is nothing in the Charter which forbids the application of such a principle. That this is the case, as it has never been denied, and as the principle in its practical application consists in fact merely in the ordinary exercise of the Royal Prerogative will, I take it for granted, be readily admitted.—The Concession of the principle therefore calls for no legislative interference;—It involves no sacrifice of any constitutional principle,—It involves no sacrifice of any branch of the Royal Prerogative,—It involves no diminution of the paramount Authority of the Mother Country; It produces no such embarrassment to the Home Government, as in the present state of the Imperial Parliament, the attempt to grant an Elective Legislative Council would be almost certain to do:—From being an English Principle, it would strengthen the Attachment of the People to the connexion with the Mother Country; and would place the Provincial Government at the head of Public opinion, instead of occupying its present invidious position of being always in direct opposition to it.

But in addition to these Advantages, which this remedy possesses in an eminent degree over all others, that have been suggested, it would be found effectual for the purposes desired.—

Permit me to restate those objects,—they were first, that the different branches of the Provincial Government should be brought to act in harmony with each other; and secondly, that the People should feel that they had sufficient influence upon their Government to secure attention to their rights,—and respect for their

feelings and prejudices: I am of opinion that this principle if fully and fairly acted upon, would affect both those objects.—An Executive Council constituted upon this principle, would from their situation as confidential advisers of the Lieutenant Governor necessarily have great influence in the House of Assembly: Their weight in the Country, as well as their confidential situation, about the person of the Lieutenant Governor, would give them great weight in the Legislative Council: And they would of course from both circumstances possess great weight with the Lieutenant Governor. They would generally if not uniformly be in one or other House of Parliament, and would there form a centre of Union, and in fact act as a sort of balance Wheel to the constitution. The measures which they brought forward, as they would necessarily have the previous sanction of the Lieutenant Governor, would come recommended on the one hand by all the weight of executive influence, and on the other by the support of those to whom the people both from habit and principle had been accustomed to look with confidence.—The people would therefore be predisposed to receive their Measures with satisfaction and confidence, as the fruit of the advice of their friends; and the Legislative Council as recommended by the servants of the Crown, whose interests as well as duty it was, to recommend nothing but what was safe, as well as satisfactory to the Public.—What was not deemed wise or prudent to adopt, instead of being suffered to pass heedlessly through the Assembly, and left to be thrown out by the Legislative Council or negatived by the Veto of the Lieutenant Governor would be met in the first instance and resisted; because every step that such proposal advanced would increase the probability of ultimate embarrassment to the Executive Council, and to those whose confidence they enjoyed; who would of course be always the most powerful Party in Parliament.—Such an Executive Council would necessarily feel a moral as well as a political responsibility for the success of their Measures.—Their permanent connexion with the Country as well as a sense of duty and natural desire to retain office, would necessarily insure their utmost exertions, not only to procure harmony but to produce good government.—The People when they saw that the King's Representative would not retain Men in his Councils who have forfeited their confidence, would be the more careful in the exercise of the Elective Franchise, and far less likely to withdraw their confidence from those in whom they had once found reason to place it.—

That the adoption of this principle would without vesting the Election of the Executive Council in the People place in their hands such an indirect influence upon it, as would be sufficient to secure attention to their rights, feelings, and prejudices, is sufficiently evident; because if such attention were not paid by those in the confidence of the Lieutenant Governor, the people have only to return to the next Parliament, men who would not give them parliamentary support, and they would necessarily have to resign; and the Lieutenant Governor to appoint others who possessed the confidence of the Representatives of the People.—A. B and C. would go out of office, and D. E and F would come in; the Lieutenant Governor always retaining the Power of calling into Action his superintending control with respect to the measures of both the one and the other: and the effect produced upon the interests of the Mother Country, being none other than that the change would give satisfaction, and, at least most probably, insure good government in the management of the internal affairs of the Colony.—

But it will be said that even under this system, collision may arise.—The Lieutenant Governor may disapprove of the measures recommended by his Council, and find it impossible to form an Executive Council which would secure parliamentary support upon any other terms than concession; or the Executive Council may find it impossible to bring the two houses to an Understanding upon every Measure:—To which I reply, that the practical working of the principle would be sure to postpone such collision to the latest possible period: That the intermediate steps of a change of the Executive Council, and of appealing to the people by a dissolution, would at all events give the Home Government the great advantage of not itself coming in collision with the People till the last moment, and of ascertaining the exact point where the question of Concession would become one merely of expediency; in addition to which I would remark that this objection is equally applicable to the practical working of the Principle in this Country; with this great difference, that supposing the people of England to be wholly unreasonable in their demands, the Crown has in point of fact no

means of resistance; whereas in the case of a Colony there is as a last resort the application of that power, which, independent of the influence which a knowledge of the possession of it, would necessarily give to the Representative of the Home Government, in the course of the previous contest, will always rest in the hands of the Parent state to be exercised when all other means fail: So that were the principle a mere experiment, to be tried now for the first time a colony would be a safer subject for such experiment than the Mother Country. With respect to collision between the two houses, such under the operation of this principle, is surely not more likely to happen in the working of the Upper Canada Constitution, than in that of the Mother Country; and the utmost that can be done by the most perfect system is to guard against the probability,—not the possibility of difficulties:—Such collision might happen even between two elective bodies, and in point of fact does happen, not only occasionally but every day under the constitution as at present acted upon; and at the worst such a case would be open to be disposed of, in the same way as a similar one in England; with this difference only, that the appointment of a batch of new legislative Counsellors, is not subject to the same difficulty that the creation of New Peerages is; and as the Seats of legislative Counsellors are not hereditary; and finally the ultimate resource of making the legislative Council elective; if indeed it be still found necessary to do so, will be as open to be taken as ever.—

It is objected that the concession of this principle is inconsistent with the preservation of the paramount Authority of the Mother Country. With respect to this, I would remark that it does not appear to be more so than the concession of the power of legislation; in the one case you vest the power of legislating on the internal Affairs of the Colony in a local Parliament with the consent of the King's Representative; in the other, you leave the Executive Power in the hands of the King's Representative requiring only that it should be exercised with the advice of persons named by himself but possessed of weight and influence with the people whose local Affairs, he is deputed to administer.—

It is objected, that it would interfere with the patronage of the Lieutenant Governor; this also appears to me to be an error; the power of appointment to office would remain in the Lieutenant Governor as at present. The right of advising is all that is claimed for the Executive Council: If such be considered an interference, it is such as can be exercised, alone to prevent mischief. But suppose that it actually deprived the Lieutenant Governor of every vestige of patronage; the simple question is, is the patronage in the hands of the Lieutenant Governor the great object for which England desires to retain Upper Canada. If this be, indeed the chief or only object, let it be candidly avowed: I will only remark that the People have been hitherto induced to believe that the Home Government were actuated by other and loftier motives.—

It is objected that it would lessen the responsibility of the Lieutenant Governor to the Home Government: this is a mistake, every act of the Provincial Government would be the Act of the Lieutenant Governor requiring his full consent quite as much as at present.—How would he be less responsible then to the King and Parliament of the Empire because he acted upon the advice of those who had the confidence of the People? The Lieutenant Governor is the connecting link between the Government of the two Countries.—You cannot make him responsible to the People of the Province, such would be wholly inconsistent with the respect due to the Sovereign whom he represented, and fatal to the connexion between the two Countries.—The proper place for his responsibility to rest is, in England.—But you must give the people such an influence upon their Executive Government as will prevent the constant jealousy to which it is at present exposed.—You can do so only either by permitting a direct influence, by vesting the election in the hands of the people, which I look upon as inexpedient and unsafe; or you must give them that indirect influence, which they see constantly exercised by their fellow subjects through their Representatives in this Country.

With respect to the objection, that the application of this principle would lead to the Executive Council falling into the hands of a few metropolitan families, I would remark that it seems much less likely to have that effect than the present system; and that if it had, it would be an evil for which the people would have to blame themselves only; and therefore not one, which could be attributed to the Home Government or their Representative the Lieutenant Governor, and above all, one the remedy for which would be in their own hands.—The same may be said as to the rather inconsistent objections, that it would lead

to too many changes, and that there are not persons enough in the Province qualified to fill the office of Executive Counsellors:

But it is pretended that the People of Upper Canada are opposed to having this indirect influence upon the Executive in the hands of their Representatives—Premising that the real Value and importance of the principle itself cannot depend either upon what the People really think upon the subject, or what they may, by violence and misrepresentation, be persuaded to afford reasons for supposing that they think;—I proceed to remark that the proposition appears absurd on the face of it: It is like an attempt to make one believe that a thirsty man has an objection to receive Water, or a hungry man food. But what is the fact? As I have already stated this is no new principle brought forward for the first time on the present occasion. It has been before the people more or less prominently since 1820—In 1828 or 1829 it was introduced into the Address in reply to the speech from the throne, and continued to be so, except during the Parliament of 1830, in which the Administration had a Majority; and of course when the Executive are in the Majority is not the time for the practical application of the principle: But in 1835 it was made the subject of solemn appeal to the Home Government in an address to the King passed by a majority of twenty one Votes, in which His Majesty was informed that until the principle was acted upon it could not be expected that the Administration would give satisfaction, or that there would be any real or permanent harmony between the Government and the Representatives of the people. The Addresses presented to Sir Francis Head since the Prorogation of the last Parliament are depended upon, as shewing that the People are opposed to the concession of this principle. If such really be the opinion of the people, it is to say the least of it somewhat remarkable, that no expression of that opinion took place after the close of the Session of 1835; although in the very address to which I have referred the Assembly intimated their intention of withholding the Supplies if their voice was not heard; that even after the resignation of the late Executive Council, a resolution declaring it to be the opinion of the House of Assembly that the Appointment of a responsible Executive Council "to advise the Lieutenant Governor on the Affairs of the Province was one of the most happy and wise features in the Constitution, and essential to our form of Government",—was adopted with but two dissenting voices out of a House of fifty five members; and that it was not until some time afterwards, that exertions began to be made to excite even the Tory Party against the late Council, and all who thought with them. This is not the first time that a Colonial Lieutenant Governor has had resort to adulatory Addresses in order to give a coloring to his Proceedings, in reporting them to the Home Government the ease with which such Addresses can be procured—is either not known or never considered. The Addresses to Sir Peregrine Maitland in 1827–8 were not less violent in their language against the Majority of the then Assembly than have been both the Addresses and Replies on the present occasion, and yet the general election which followed left the Executive Government in a Minority as small, if not smaller, than in the preceding Parliament:—

But should Sir Francis Head by violence and intimidation unhappily succeed in producing a Majority in the next Provincial Parliament, do not suppose my Lord that there will be less necessity for the application of the principle; new difficulties will daily spring up, and when once the delusion under which the popular mind has been acted upon has passed away, it will return with double pertinacity not I fear merely to the principle now asked for, but to Changes of a more extensive and organic character; Time I am persuaded, will convince Your Lordship of this; I tremble lest the Conviction should arrive too late to prevent the consequences which I deprecate.—

To conclude my Lord, I most earnestly recommend not only as *expedient*, but *necessary* for the preservation of the Connexion between this Country and Upper Canada:—First, That His Majesty's Imperial Government should at once adopt the final determination, that the Provincial Government as far as respects the internal Affairs of the Province, should be conducted by the Lieutenant Governor, with the Advice and Assistance of the Executive Council, acting as a Provincial Cabinet;—And that the same Principle on which His Majesty's Cabinet in this Country is composed, should be applied and acted upon in the formation, continuance in office and removal, of such local Provincial Cabinet:—Secondly that this Resolution of the Home Government should be inserted in the shape of a Specific Clause in the general Royal Instructions for the Govern-

ment of the Province, and formally communicated to both houses of the Provincial Parliament; And Thirdly—That Sir Francis Head should be recalled, and a Successor appointed who shall have been practically acquainted with the working of the Machinery of a free Representative Government.—

I have now stated to Your Lordship, briefly my views and opinions, and I am ready to afford any further explanations that Your Lordhip may desire, I may of course be mistaken in both, but I assure Your Lordship that I am in my own mind most firmly persuaded, that unless the course above recommended is promptly adopted, and pursued, it will be wholly out of the power of the Mother Country to preserve the affections of the Upper Canadian People, although she may of course for a time continue to retain them in subjection to her Authority.—

I have the honor to be,
My Lord,
Your Lordship's Most obedient
humble Servant,
(Signed) Robt. Baldwin.

Right Honble.
Lord Glenelg
His Majesty's Principal Secy of
State for the Colonies
&c. &c. &c.

## XCIII

## LORD JOHN RUSSELL'S TEN RESOLUTIONS, MARCH 6, 1837

[Trans.: *Hansard*: (3rd series) vol. xxxvi, p. 1303.]

1. That since the 31st day of October, in the year 1832, no provision has been made by the Legislature of the province of Lower Canada, for defraying the charges of the administration of justice, and for the support of the civil government, within the said province, and that there will, on the 10th day of April now next ensuing, be required for defraying in full the charges aforesaid to that day, the sum of £142,160. 14s. 6d.

2. That at a Session of the Legislature of Lower Canada, holden at the city of Quebec, in the said province, in the months of September and October, 1836, the Governor of the said province, in compliance with his Majesty's commands, recommended to the attention of the House of Assembly thereof, the estimates for the current year, and also the accounts, showing the arrears due in respect of the civil government, and signified to the said House his Majesty's confidence that they would accede to the application which he had been commanded to renew, for payment of the arrears due on account of the public service, and for the funds necessary to carry on the civil government of the province.

3. That the said House of Assembly, on the 3d day of October, 1836, by an address to the Governor of the said province, declined to vote a supply for the purposes aforesaid, and by the said address, after referring to a former address of the said House to the Governor of the said province, declared that the said House persisted, amongst other things, in the demand of an elective Legislative Council, and in demanding the repeal of a certain Act passed by the Parliament of the United Kingdom in favour of the North American Land Company; and by the said address, the said House of Assembly further adverted to the demand made by that House of the free exercise of its control over all the branches of the Executive Government; and by the said address, the said House of Assembly further declared, that it was incumbent on them, in the present conjuncture, to adjourn their deliberations until his Majesty's Government should, by its acts, especially by rendering the second branch of the Legislature conformable to the wishes and wants of the people, have commenced the great work of justice and reform, and created a confidence, which alone could crown it with success.

4. That in the existing state of Lower Canada, it is unadvisable to make the Legislative Council of that province an elective body; but that it is expedient that measures be adopted for securing to that branch of the Legislature a greater degree of public confidence.

5. That while it is expedient to improve the composition of the Executive Council in Lower Canada, it is unadvisable to subject it to the responsibility demanded by the House of Assembly of that province.

6. That the legal title of the North American Land Company to the land holden by the said Company, by virtue of a grant from his Majesty, under the public seal of the said province, and to the privileges conferred on the said company by the Act for that purpose made, in the fourth year of his Majesty's reign, ought to be maintained inviolate.

7. That it is expedient, that so soon as provisions shall have been made by law, to be passed by the Legislature of the said province of Lower Canada, for the discharge of lands therein from feudal dues and services, and for removing any doubts as to the incidents of the tenure of land in free and common soccage in the said province, a certain Act made and passed in the sixth year of the reign of his late Majesty King George IV., commonly called "The Canada Tenures Act," and so much of another Act passed in the third year of his said late Majesty's reign, commonly called "The Canada Trade Act," as relates to the tenures of land in the said province, should be repealed, saving nevertheless to all persons all rights in them vested under or by virtue of the said recited Acts.

8. That for defraying the arrears due on account of the established and customary charges of the administration of justice, and of the civil government of the said province, it is expedient, that after applying for that purpose such balance as shall, on the said 10th day of April, 1837, be in the hands of the Receiver-General of the said province, arising from his Majesty's hereditary, territorial, and casual revenue, the Governor of the said province be empowered to issue from and out of any other part of his Majesty's revenues, in the hands of the Receiver-General of the said province, such further sums as shall be necessary to effect the payment of the before-mentioned sum of £142,160. 14s. 6d.

9. That it is expedient that his Majesty be authorised to place at the disposal of the Legislature of the said province, the net proceeds of his Majesty's hereditary, territorial, and casual revenue arising within the same, in case the said Legislature shall see fit to grant to his Majesty a civil list for defraying the necessary charges of the administration of justice, and for the maintenance and unavoidable expenses of certain of the principal officers of the civil government of the said provinces.

10. That great inconvenience has been sustained by his Majesty's subjects inhabiting the provinces of Lower Canada and Upper Canada, from the want of some adequate means for regulating and adjusting questions respecting the trade and commerce of the said provinces, and divers other questions, wherein the said provinces have a common interest; and it is expedient that the Legislature of the said provinces respectively be authorised to make provision for the joint regulation and adjustment of such their common interest.

## XCIV

## ADDRESS OF ASSEMBLY OF LOWER CANADA, AUGUST, 1837[1]

[Trans.: Christie, *op. cit.*]

May it please Your Excellency.

We, Her Majesty's faithful and loyal subjects, the Commons of Lower Canada in Provincial Parliament assembled, humbly thank your Excellency for your Speech from the Throne at the opening of the present session. We assure your Excellency that at whatever season we may be called upon to perform the duties entrusted to us by the people of the Province, no personal inconvenience will prevent our labouring, as our first and most important occupation, to ensure the liberties and happiness of our fellow subjects,—to remove the evils which have pressed, and still continue in a more aggravated form to press upon them, and to protect them against the system which has corrupted the Provincial Government, and has been sufficiently powerful not only to cause the Mother Country to refuse all justice to the people with regard to their demands and ours for the improvement of their political institutions, and for the reform of abuses, but to urge on the highest metropolitan authorities from whom we looked for justice and protection, to acts of violence, to a violation of the most sacred and best established rights of the Canadian people and of this Legislature, and to the destruction of the very foundations of Government. We are, then bound by our duty, frankly to declare to your Excellency, under the solemn circumstances in

[1] This address is the reply to Gosford's speech in which he outlined the ten resolutions (No. XCIII).

which we are placed, and after full and calm deliberation, that since the time when we were last called to meet in Provincial Parliament, we have seen in the conduct and proceedings of the Metropolitan Government, and of the Colonial Administration towards this country, nothing which could re-establish in the people the confidence and affection which the long and fatal experience of the past has almost destroyed; but that, on the contrary, every recent event has tended to efface what remained of these feelings, and to consolidate, in opposition to the liberties, interests and wishes of the people, the Colonial Oligarchy factiously combined against them, and the hitherto unbridled and uncontrolled sway of the Colonial Ministers in Downing Street.

The avowal which it has pleased your Excellency to make to us, that the disposition of the authorities and of Parliament with regard to us, and the oppressive and unconstitutional measures which have been the result, are the consequences of the recommendations made by certain pretended authorities known by the name of the Royal Commissioners, has convinced us of the correctness of the opinions we have hitherto expressed with regard to this Commission which, constituted and acting under no law, and without regard to law, and bound beforehand by its instructions to the partial views and narrow policy of the British Ministry in the government of the colonies, could not possibly co-operate in doing justice to the inhabitants of this Province, and in establishing their institutions, their liberties and their prospects for the future, on the solid basis of their wishes and their wants, as well as on the principles of the constitution. We were therefore in nowise astonished at discovering in the productions of this pretended commission nothing but preconceived opinions, prejudices at variance with its mission and its duty, ideas of government founded on data utterly foreign to the country, or at finding it fomenting divisions and national distinctions, forgetful of constitutional principles, calumniating the provincial representation, and practising deception towards this House and towards the people. We are bound especially to notice in the reports in question one essential and paramount contradiction which pervades every part of them, and forms their essence. It is, that, while they admit the reality of the greater portion of the abuses and grievances of which we have complained, the Commisionsers do not recommend their removal and the destruction of the causes which have produced them, but an act of aggression against this House which has denounced them, and the absolute destruction of the representative government in the Province, by the illegal and violent spoliation of the public moneys of the people, by the Ministers or by the Parliament; whereas it was the duty of the Commission and of the Mother Country to assist this House in the entire removal of these evils, and in rendering their recurrence impossible, by constituting the second branch of the Legislature by means of the elective principle,—by repealing all laws and privileges unjustly obtained, and by ensuring the exercise of the powers and legitimate control of this House over the internal affairs of the Province, and over all matters relative to its territory and the wants of its inhabitants, and more especially over the public revenue raised therein.

These remarks will render unnecessary a portion of those which we might have been led to make on the series of resolutions spoken of by your Excellency, and which being proposed by Lord John Russell, one of the Ministers of the Crown, were adopted by the two Houses of the Parliament of the United Kingdom.[1] We perceive in this measure on the one hand, a formal and total refusal of the reforms and improvements demanded by this House, and by the people, and on the other, an abuse of the powers of Parliament, for the purpose of destroying the laws and constitution of this Province by force, violating with regard to us the most sacred and solemn engagements, and of thereby establishing irremediably on the ruins of our liberties, and in place of the legitimate, efficient and constitutional control which this House, and the people through it, have a right to exercise over all the branches of the Executive Government, corruption and intrigue, the pillage of the revenue, and the self-appropriation of the best resources of the country by the colonial functionaries and their dependents, the domination and ascendancy of the few, and the oppression and servitude of the mass of the inhabitants of this Province, without distinction of class or of origin.

It is our duty, therefore, to tell the Mother Country, that if she carries the spirit of these resolutions into effect in the Government of British America, and of this Province in particular, her supremacy therein will no longer depend upon the

[1] See No. XCIII.

feelings of affection, of duty and of mutual interest which would best secure it, but on physical and material force, an element dangerous to the governing party, at the same time that it subjects the governed to a degree of uncertainty as to their future existence and their dearest interests, which is scarcely to be found under the most absolute governments of civilized Europe. And we had humbly believed it impossible that this state of permanent jeopardy, of hatred and of division, could be wittingly perpetrated by England on the American continent; and that the liberty and welfare of every portion of the Empire were too dear to the independent body of the English people to allow them to prefer maintaining, in favour of the functionaries accused by the people of this Province, the system which has hitherto been its bane.

If, even before the opening of the present session, we had been undeceived in this fond hope by public report, if we had little expectation that a sudden change in the councils of the Empire should place us at once in possession of the benefits of the constitutive reforms which we had declared to be essential, and such as would alone be sufficient, it was still natural that we should most anxiously look forward to our being called together in Parliament, because it was to be supposed, at least, that most important reforms had been effected in the administration of the Government, and that others were speedily to follow them: We have learned with fresh regret from your Excellency's speech, that no such reform has been effected, or will be so at any near and determinate period: notwithstanding the so often repeated pledges of the Government. Your Excellency has been pleased to allude distantly to the improvement of the personal composition of the Legislative and Executive Councils of this Province. With regard to the Executive Council, we shall here forbear any painful reflections on the unmodified existence of that body, after it had been so solemnly repudiated by your Excellency in the name of the Crown, and on its co-operation with the other portions of the Provincial Executive in a system of premeditated coercion to effect the overthrow of the laws and constitution, of incrimination, persecution, and arbitrary removals from office, directed against the mass of the people who remain faithful to the true principles of the British Constitution, and who have manifested their attachment to their assailed liberties. We further represent, that the present Executive, having, instead of performing its promises of justice and the removal of abuses and grievances, entered upon the dangerous and slippery path which has been the ruin of preceding administrations, and having utterly alienated from it the affection of an important portion of those of Her Majesty's subjects most devoted to the liberty and welfare of the country, in order to bestow its confidence and that of the Government partially, on those only who flatter it, no longer possesses in the person of its Chief or in those of its other members the capability of effecting the reforms indispensably necessary as preliminaries to any arrangement between the Government of the Mother Country and the colony, in a just, equitable, and impartial manner, adapted to satisfy this House and the people, and more especially to ensure between the several branches of the Legislature that co-operation and that uniformity of general views which we persist in believing to be absolutely requisite. We should have hoped that as a pledge of the security of the Government, the Legislative Council would have been so remodelled as to enable us to ascertain up to what point it had been rendered capable of legislating conformably with the wishes and wants of the people, and to act according to the conclusion to which we might have come on this important subject. This essential reform having been omitted, we are bound to declare that our duty towards the people by whom we are sent here, imperiously requires us to follow, under existing circumstances, the course adopted by us in our Address of the thirteenth September, one thousand eight hundred and thirty-six; we therefore persist therein, as well as in all the declarations and demands therein contained.

The reforms which your Excellency announces as having been delayed, will, nevertheless, if effected, in a spirit of justice and harmony, become a powerful motive with us for examining whether the Legislative Council in its present form of constitution, could even for a time co-operate with us in a system of Legislation conformably to the interests of the people, and of thereby ascertaining whether it shall have been so remodelled as to induce us to manifest confidence in Her Majesty's Government.

In our efforts to remove the evils which have pressed upon our country, we have had recourse to none but constitutional means, founded on the most

approved and best recognized principles. We have it so much at heart, to see the Government once more deserve the public confidence, that to assist it in attaining that confidence we should recoil before no sacrifice but that of the liberties or of the honor of the people. We have given proof of this disposition, even of late, whenever we have been able to entertain a hope that we were thereby aiding to advance the prosperity of the country. But we declare, that in the present conjuncture we have not been able to derive from your Excellency's speech, or from any other source, any motive for departing even momentarily from our determination to withhold the supplies until the grievances of the country are redressed.

Your Excellency acknowledges that the chief object for which we are now convened is to afford us an opportunity by granting the supplies, of preventing their being violently taken under an Act of the Imperial Parliament founded on resolutions already adopted. In the absence of any other motive for thus recurring to our authority, than the tardy consideration of the character of those resolutions as well as of the act of which they might form the basis, Her Majesty's Government might, we humbly conceive, have recollected that those resolutions are not our work, that we had already fully deliberated on the demand made to us by your Excellency, and that while we have not before us any act, or even any hope which can promise a mitigation of the evils under which the people are suffering, we should not be justifiable in placing in the hands of hostile powers the means of aggravating and perpetuating those evils.

There could exist, then, no considerations but such as might be dictated by a servile fear foreign to our mandate and derogatory to the character of the people, to induce us to be wanting to do our duty in the present instance, by ratifying the violation of the rights of our constituents, and of this House, by the British authorities, and by taking on ourselves the responsibility for the consequences which might result from it. We leave this responsibility to those who have assumed it, and strong in the justice of our cause, we rely, as we have heretofore done, on Providence, on the public and private virtues of all classes of the people, on their constancy, their perseverance, and their attachment to the principles of order and liberty which, following their example, we have unceasingly striven to maintain.

In thus expressing our wish that a commencement of reform had tended to re-establish confidence, we cannot have been misunderstood as to the motives which actuate us. We repeat, nevertheless, that we shall regard all administrative measures whatsoever as insufficient permanently and effectively to ensure the peace, security and happiness of the Province; and that the essential and constitutive reforms which we have demanded, and especially the application of the elective principle to the Legislative Council, the repeal of all undue privileges and monopolies, and of injurious laws passed in England, the free exercise of the rights and privileges of this legislature and of this House in particular, and the establishment of a popular and responsible government, are the only means by which the advantages herein before mentioned can be ensured, or the political connexion with Great Britain rendered beneficial to the people of Canada.

It is, therefore, our ardent wish that the resolutions adopted by the two Houses of Parliament may be rescinded, as attacking the rights and liberties of this Province, as being of a nature to perpetuate bad Government, corruption and abuse of power therein, and as rendering more just and legitimate the disaffection and opposition of the people. If this return by the Government of the Mother Country to what we consider its duty towards this colony, should take place under the Reign of Her Most Gracious Majesty Queen Victoria, we are unable to express to your Excellency how warmly we should congratulate ourselves on having persevered in claiming justice for the people, notwithstanding the peculiar obstacles and difficulties which have tended to deter us.

The special and local subjects pointed out by your excellency, and in particular the advances of public money made to relieve the distress in certain parts of the Province, and for other purposes, will form the subject of our deliberations as soon as circumstances will permit, and whenever we shall be no longer prevented from considering them.

## XCV

## ADDRESS OF THE CONSTITUTIONAL ASSOCIATION OF THE CITY OF MONTREAL TO THE INHABITANTS OF THE SISTER COLONIES, 13 DEC. 1837

[Trans.: Christie, *op. cit.*]

When sedition and rebellion have boldly proclaimed themselves, in the most populous and prosperous portions of this once contented and apparently loyal Province, and when anarchy and confusion have set the laws at defiance, and outraged the harmony and quiet of social life, the question naturally arises, to what circumstances of oppression, or to what unredressed grievances such a calamitous state of things is to be ascribed.

The Constitutional Association of this city has undertaken the important duty of answering the enquiry, and of explaining to the inhabitants of our Sister Colonies, as succinctly as the nature of the subject will admit, the real cause of the discontent which has called into being the active disturbances at present, most unhappily, and at the same time most unjustifiably, existing in Lower Canada.

At the conquest of the Province of Quebec by the British arms, the greater proportion of its inhabitants chose to remain in the Province, trusting to the generosity of their conquerors, rather than to return to the country of their ancestors; they became British subjects by the mere fact of their provincial residence, and subsequent civil and political benefactions conferred upon them, demonstrated their well-placed trust in the generosity of the British Government.

The full exercise of their religious worship, the complete enjoyment of their ancient civil laws, and the undisturbed use of their native language, were among the number of civil and social privileges, guaranteed to them; and political privileges, of equal extent to those enjoyed by the British provincial inhabitants, were, in addition, subsequently bestowed upon them.

The uncongeniality of the French laws as a system of provincial civil jurisprudence, with the spirit and feelings of British settlers, and their expressed desire for a change from the petty tyranny of a Governor and Council to the freedom of a Representative Provincial Government—procured still greater advantage for the French Canadians. In the year 1791, the division of the Province of Quebec into the two separate Provinces of Lower Canada and Upper Canada, was carried into effect, and a Constitution, essentially similar to that of the Parent State, was conferred upon each, whilst, at the same time, universal suffrage, was, in effect, granted to their inhabitants.

It was conceived that this measure, by which one division should consist, as much as possible, of those who were well inclined to the English laws, and the other, of those who were attached to the French laws, was best adapted to put an end to all disputes of a legal sort—to reconcile the jarring interests and opposite views of the provincial inhabitants—to prevent a great degree of animosity and confusion, from their rooted opposition of interests and to obviate dissatisfaction from a great ascendancy of one party over another in a united Legislature.

Two objections to the measure were, however, neglected by the Minister of the day, that it fostered a population of foreigners in a British colony, and that it contained no provision, whereby the inhabitants of the British Islands should be totally excluded from settling themselves in Lower Canada.

The experience of fifty years of separation between the Provinces, and the present insurrectionary and seditious spirit exhibited in Lower Canada, plainly show how far the advantageous results anticipated from that impolitic and undesired measure have been realized.

The possession of the right of almost universal suffrage, and of a numerical popular majority of the provincial constituency, gave the complete command of the Representative branch of the Legislature to the French Canadians, who soon exhibited a perfect knowledge of their advantage, and of that exclusive spirit which has since invariably actuated all their proceedings, and grown into a firm determination to accomplish their final purposes of the destruction of the

interests and rights of the provincial inhabitants of British and Irish origin, and of the provincial connexion subsisting with the Parent State.

A cursory examination of the composition of the House of Assembly, from its establishment, will shew that, with scarcely an exception, no individual of British or Irish origin has been returned to serve as a member of that body by a French Canadian majority, unless as a pledged supporter of French Canadian principles; with scarcely an exception, no provincial law has been passed, how much soever required for the support of the interests or the protection of the rights of the inhabitants of British and Irish origin, and that even these legal exceptions were invariably of a temporary nature, and subject to the capricious pleasure of French Canadian majorities. The spirit of the legislation of that body will shew that its temporary character was adopted to render the Province the more completely subject to their control, or to enable them the more easily to take advantage of their expected predominance, for the abrogation of those very temporary laws which they had been constrained to pass. The political principles of that body will shew a fixed opposition to British interests, not only in their aversion to or rejection of every measure, which would tend to the introduction of capital and of a British population into the Province, as, for example, an effectual system for the registration of mortgages, and an abrogation of the feudal tenure; but also in their positive introduction and adoption of every measure likely to tend to the privation of British and Irish rights, or to the destruction of British and Irish interests, such as the existing county division of the Province, by which the British and Irish constituency in the seigniories has been completely swamped in the greater numbers of the French Canadians, and their defeated attempt to deprive their fellow-subjects of British and Irish origin in the cities, tenants of leasehold property in copartnership, from a right of voting for Members of the Assembly. The claim of that body, for the sole management and disposal of the whole revenue of the Province, has constantly had in view the attraction into their own hands of the entire provincial authority, and the subjection of the Executive Government to their arbitrary will. From their first insidious attempt in 1795, to obtain the repeal of the permanent appropriation contained in the Act of 1774, for the support of the civil government and the administration of justice, thereby to subject the Executive Government to their good pleasure, for any further support than the pittance they then agreed to allow, through the whole course of the financial difficulties, which they have never allowed to slumber, by means of their annual supply bills, their difficulties as to the items of that supply, their resolution in 1822 not to grant permanent supplies, or supplies during the Sovereign's life, their delegations to England in 1828, and the whole category of their agitation upon the subject, down to the year 1831, when the full accomplishment of their long sought desires was obtained from the good faith of the British Government, by the repeal of the permanent appropriations; their first, last, great object was to obtain possession of the provincial revenues, well knowing that by this means the Government would be cast into their hands. Finally, the detail of the grievances of this body, as representing the opinions of their constituency, the so called great mass of the population, completes the evidence of their exclusive interests: in them will be found, the abrogation of the Charter granted to the British American Land Company, by means of which the Assembly sought to assume the management of the waste lands in the townships, and thereby to prevent the settlement therein of a British and Irish population; the repeal of the Tenures Act, by which a commutation of seigniorial tenure may be effected, from their apprehension of its leading to the introduction into the Province of British capital; their indisposition to encourage the settlement of the townships of this Province, because they are principally inhabited by a British, Irish and American population; their unwillingness to co-operate with Upper Canada, in the extensive improvements in progress in that Province, by which its settlement and prosperity might be augmented, and like advantages might thereby accrue to the British and Irish inhabitants of Lower Canada; and their pertinacious endeavours to render the Legislative Council elective, because in it alone were to be found the means of opposing their exclusive pretensions, and of protecting British interests. The history of the House of Assembly in its composition, its legislation, its spirit, and political principle, fully establishes the aim which its members have constantly kept in view, the aggrandizement of the population of French and the oppression of that of British origin.

The recorded testimony of a French Canadian leader, and one of the delegates to England, in 1828, to represent the grievances of his fellow-countrymen, and since that time, their paid agent for similar purposes, corroborates the views taken by the Constitutional Association; he declared, in his examination before the Canada Committee of the House of Commons, in 1828, that "the establishment of the English law as applicable to property held in the townships on the tenure of free and common soccage would be an infringement of the rights belonging to the French Canadians, if not done by the Legislature of Lower Canada; that the French laws should be allowed to continue all over the country; that facilities should have been given to the French Canadians to settle in the Townships; that the means of going there should have been given to them; that a system of education, according to the notions and ideas of the French Canadians, should have been followed; that the desire of the French Canadians must necessarily be to keep up their own institutions, and to preserve their laws in every part of the country; that the Legislative Council should be composed of men who would side with the mass of the people, and, in effecting this latter arrangement, that its natural effect would be to secure the means of extending the French laws and the French Canadian system over Lower Canada."

In the full and complete security of their persons and property, in the free and unrestricted enjoyment of their religious worship, their ancient civil laws, their native and beloved language, and of an equality of rights and privileges in the provincial representative government with their fellow-subjects of British and Irish origin, in possession, moreover of a numerical popular majority, the French Canadians could have no sympathies in common with the people of another race and speaking another language, no inducement to divest themselves of prejudices dear to them alike from the associations of country and the recollections of life, or to abandon habits and customs which they cherished and to which they were firmly attached, for the questionable advantages to be obtained from assimilation with strangers, whom they were taught to disregard; and the natural consequence has been, that, in proportion as the French Canadian population has increased, these evils have likewise increased, until the repugnance to British interest and British connexion has finally assumed the form of open and declared rebellion.

The French Canadian population were thus not only nationally inclined to mark their active opposition to their fellow-subjects of British and Irish origin, but they have been taught to consider them as strangers and trespassers upon their soil; they have been taught to feel towards them none of those kindly sympathies which unite together subjects of the same country and possessors of the same rights; they have in fine been taught to believe themselves oppressed by their fellow-subjects of British and Irish origin, and to imagine that they possessed the power of expelling their oppressors. Overlooking moral feebleness in physical capability, desperate men made an open livelihood by influencing the population of French origin to acts of violence; missionaries of insurrection, by their own example, ostentatiously shewed to them the manner of setting the laws at defiance; and individuals loaded with every species of personal contempt, aggravated a local pressure into popular tumult, or embittered an unimportant grievance into bloodshed. In all cases, the object was attained, active discontent was introduced into the passive population, and noon day meetings gradually ripened into sedition and rebellion.

It is this exclusive French Canadian spirit alone which has given rise to all the discontent existing in this Province, it is this which has in fact made the question one of national origin and not of political party, in it is to be discovered the source of all the disturbances which have brought sedition and rebellion in their train, and in it alone is to be found a full and complete answer to the enquiry, to what causes the present unhappy condition of this Province is to be ascribed.

This conclusion is borne out, by the text-book of the complaints of the French Canadian Representatives, adopted in 1834, the famous ninety-two Resolutions of the House of Assembly,[1] in which will be found a detail of grievances and abuses which that body knew to be either altogether redressed, or in active course of being so; reference is therein principally had to those which have been alluded to: the introduction of the elective principle into the composition of the Legislative Council, the abrogation of the Tenure Act, and the disposal of the whole

[1] No. LXXXIII.

revenue of the Province; the two former have been most wisely refused, the latter as unwisely granted. By their admission, therefore, no real oppression exists in the Province, and no real grievance, consistent with the preservation of British supremacy, remains unredressed.

The French Canadian leaders have endeavoured to excite the sympathy of the citizens of the United States, and of the professed republicans in Upper Canada, in behalf of themselves and their fellow-countrymen, by constantly appealing to their assistance for the support of popular institutions and popular rights, as if their real views were republican, and as if that form of government were favoured by the French Canadian population. It is sufficient to meet this fallacious inference with a direct denial, as being contrary to fact, and to the habits, feelings and customs of that population, and as being altogether disproved by the evident principle of all the measures which have been proposed or approved by the French Canadian population, or its Representatives in Provincial Parliament assembled. These plainly shew that their views did not extend beyond the means of securing their own exclusive designs and intentions.

Although hitherto the voice of supplication in favour of British and Irish provincial grievances has been unheeded, amidst the clamours of an insurrectionary faction, these loyal subjects still confidently trust in the magnanimity of the Mother Country, and still anticipate from her justice, an entire redress of their unmerited and patiently endured grievances.

It is in the midst of disorder and disturbance, that the Constitutional Association of this city presumes to claim the sympathies of the inhabitants of the Sister Colonies, and their assistance, if required, for the protection of the rights and privileges of British subjects, and the maintenance of the connexion of the Province with the Mother Country.

PETER MCGILL, Chairman,
WM. BADGLEY, Secretary.

Montreal, Dec. 13, 1837.

## XCVI

## AN ACT TO MAKE TEMPORARY PROVISION FOR THE GOVERNMENT OF LOWER CANADA

(1 & 2 Victoria, c. 9.)

10th February, 1838.

Whereas in the present state of the Province of Lower Canada the House of Assembly of the said Province, constituted under the Act passed in the thirty-first year of his Majesty, King George the Third, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province," cannot be called together without serious detriment to the interests of the said Province, by reason whereof the Government of the said Province cannot be duly administered according to the provisions of the said Act: And whereas it is expedient to make temporary provision for the Government of Lower Canada, in order that Parliament may be enabled, after mature deliberation, to make permanent arrangements for the Constitution and Government of the said Province, upon such a basis as may best secure the rights and liberties and promote the interests of all classes of her Majesty's subjects in the said Province: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from the proclamation of this Act [1] in the said Province as hereinafter provided, until the first day of November in the year one thousand eight hundred and forty, so much of the said Act of the thirty-first year of King George the Third, and of any other Act or Acts of Parliament, as constitutes or provides for the constitution or calling of a Legislative Council or Legislative Assembly for the Province of Lower Canada, as confers any powers or functions upon the said Legislative Council and Legislative Assembly, or either of those bodies, shall cease and be of no force.

31 Geo. III, cap. 31.

The powers of the present Legislature of Lower Canada suspended.

[1] This act was proclaimed on March 29, 1838, in the *Quebec Gazette*.

Her Majesty may appoint a special Council for the affairs of Lower Canada.

II. And be it enacted that it shall be lawful for her Majesty, by any commission or commissions to be from time to time issued under the Great Seal of the United Kingdom, or by any instructions under her Majesty's signet or sign manual, and with the advice of her Privy Council, to constitute a special Council [1] for the affairs of Lower Canada, and for that purpose to appoint or authorize the Governor of the Province of Lower Canada to appoint such and so many special Councillors as to her Majesty shall seem meet, and to make such provision as to her Majesty shall seem meet for the removal, suspension, or resignation of all or any such Councillors: Provided always that no member of the said special Council shall be permitted to sit or vote therein until he shall have taken and subscribed before the Governor of the Province of Lower Canada, or before some person authorized by the said Governor to administer such Oath, the same Oath which is now required to be taken by the members of the Legislative Council and Assembly before sitting or voting therein respectively.

Members of the Council to take an Oath.

The Governor and Council may make Laws or Ordinances for the Government of Lower Canada.

III. And be it enacted that from and after such proclamation as aforesaid, and until the first day of November in the year one thousand eight hundred and forty, it shall be lawful for the Governor of the Province of Lower Canada, with the advice and consent of the majority of the said Councillors present at a meeting or meetings to be for that purpose from time to time convened by the Governor of the said Province, to make such laws or ordinances for the peace, welfare, and good Government of the said Province of Lower Canada as the Legislature of Lower Canada, as now constituted, is empowered to make; and that all laws or ordinances so made, subject to the provisions hereinafter contained for disallowance thereof by her Majesty, shall have the like force and effect as laws passed before the passing of this Act by the Legislative Council and Assembly of the said Province of Lower Canada, and assented to by her Majesty, or in her Majesty's name by the Governor of the said Province: Provided always that no such law or ordinance shall be made unless the same shall have been first proposed by the said Governor for adoption by the Council, nor unless the said Governor and five at least of the said Councillors shall be actually present when such law or ordinance shall be made: Provided also, that no law or ordinance so made shall continue in force beyond the first day of November in the year one thousand eight hundred and forty-two, unless continued by competent authority: Provided also, that it shall not be lawful by any such law or ordinance to impose any tax, duty, rate, or impost, save only in so far as any tax, duty, rate, or impost which at the passing of this Act is payable within the said Province may be thereby continued: Provided also that it shall not be lawful, by any such law or ordinance, to alter in any respect the law now existing in the said Province respecting the constitution or composition of the Legislative Assembly thereof, or respecting the right of any person to vote at the election of any member of the said Assembly, or respecting the qualifications of such voters, or respecting the division of the said Province into counties, cities, and towns for the purpose of such elections; nor shall it be lawful by any such law or ordinance to repeal, suspend, or alter any provision of any Act of the Parliament of Great Britain or of the Parliament of the United Kingdom, or of any Act of the Legislature of Lower Canada as now constituted, repealing or altering any such Act of Parliament.

Such laws to be proposed by the Governor.

Limiting their duration.

Proviso as to imposing taxes.

Laws or Ordinances not to affect the existing laws respecting rights of election, etc.

No law, etc., to appropriate the monies in hand for repayment of the sum of £142,160 unless on certificate of Commissioners of Treasury; nor to an amount exceeding the appropriation of 1832.

IV. Provided always, and be it enacted, that it shall not be lawful by any such law or ordinance to appropriate any monies which now are or which shall hereafter be in the hands of the Receiver-General of the said Province of Lower Canada towards the repayment of any sum or sums of money which shall have been issued out of the sum of one hundred and forty-two thousand one hundred and sixty pounds, fourteen shillings, and sixpence, granted to her Majesty by an Act passed in the last session of Parliament for advances on account of charges for the administration of justice and of the Civil Government of the Province of Lower Canada, unless upon a certificate from three or more of the Commissioners of her Majesty's Treasury, setting forth the several sums which shall have been so advanced for any of the purposes aforesaid: Provided also, that, exclusive of any such repayment as aforesaid, no appropriation to be made by any such law or ordinance of the monies aforesaid in respect of the public service for any one year shall exceed the total amount of the sums appropriated by law within the said Province for the public service thereof for the year one thousand eight hundred and thirty-two.

[1] In accordance with this provision, sir John Colborne appointed a special council.

Laws or Ordinances may be disallowed by Her Majesty in Council.

V. And be it enacted that the Governor of the said Province is hereby required, by the first convenient opportunity, to transmit to one of her Majesty's Principal Secretaries of State an authentic copy of every law or ordinance made under the authority of this Act; and that it shall be lawful, at any time within two years after such law or ordinance shall have been so received by such Secretary of State, for her Majesty, her heirs or successors, by her or their Order in Council, to declare her or their disallowance of such law or ordinance; and that such disallowance, together with a certificate under the hand and Seal of such Secretary of State, testifying the day on which such law or ordinance was received as aforesaid, being signified by such Governor by proclamation within the said Province, shall make void and annul the same from and after the date of such signification.

This Act not to affect laws now in force, etc.

VI. And be it enacted that nothing herein contained shall be taken to affect or invalidate any law, statute or ordinance now in force within the said Province of Lower Canada, or in any part thereof, except in so far as the same is repugnant to this Act.

Proclamation of this Act.

VII. And be it enacted that this Act shall be proclaimed by the Governor of the said Province of Lower Canada within the said Province, and shall commence and take effect within the said Province from the proclamation thereof.

The term "Governor" defined.

VIII. And be it enacted, that for the purposes of this Act any person authorized to execute the commission of Governor of the Province of Lower Canada shall be taken to be the Governor thereof.

Act may be altered, etc.

IX. And be it enacted that this Act may be altered or repealed by any Act to be passed in the present session of Parliament.

## XCVII

## REPORT OF SELECT COMMITTEE OF HOUSE OF ASSEMBLY, UPPER CANADA, FEBRUARY 1838 [1]

[Trans.: *Appendix Upper Canada House of Assembly Journals*, 1837–8, pp. 257 ff.]

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1st. The first project deserving of notice, is the repeal of the Constitutional Act,[2] 31 Geo. 3rd, so far as the same relates to Lower Canada, and (with some slight variation as regards the imposition of duties and intercourse with Upper Canada), a return to the provisions of the Act [3] 14th Geo. 3rd, chap. 83.

The objections that the inhabitants of Lower Canada, *of French origin*, might raise to this change in their form of Government, ought not to be considered of very great weight. In the first place, it is well known, that they violently opposed the introduction of the representative system at the time it was adopted, as being unsuited to their habits and opinions; in the same manner, and probably for the same reasons, that they now oppose the introduction of Free and Common Soccage, instead of the Feudal Tenure; and secondly, because they have abused this invaluable privilege of British Subjects, and have employed the power it gave them, to bring about revolt, and the entire overthrow of the Government. If however our fellow Subjects of British descent, should seriously oppose themselves to this change, the question would then be, whether such modifications might not be introduced into the measure, as would gain their acquiescence. Your Committee venture to suggest the following:—Let the number of Legislative Councillors be considerably increased beyond the number authorized by the 14th Geo. 3rd: let these be taken in equal numbers from the inhabitants of British, and Irish, and of French descent: and let the English language be the only language used in legal and legislative proceedings.

[1] This report was drawn up after the failure of the Mackenzie rebellion, which it vividly describes as being ended 'by the indignant frown of an insulted people'. The earlier part of the report, which covers many pages of the *Journals*, traces the history of British Canada and lays all the trouble at the door of the imperial government owing to a weak policy of 'concession' and 'conciliation'. The document is, however, important for its suggestions towards the solution of Canadian difficulties, and those parts of it in which these suggestions are made are printed in full. The most remarkable of them is the suggestion for Canadian members in the British parliament. This suggestion had traditions behind it in Upper Canada, as it was made to the under secretary of state in 1822 by John Beverley Robinson (*Memoir on Means to promote the Joint Interests of the Mother Country and her North American Colonies*, pp. 39 ff.). The whole tone of the document is characteristically 'anti-democratic', and reflects the régime of sir Francis Head, for which high praise is forthcoming. At the same time there is severe criticism for the colonial office. [2] No. LIV. [3] No. XXXI.

In connection with this measure, let the boundary line between Upper and Lower Canada be so altered, as to give to the Upper Province all the territory lying on the south-west side of the River Ottawa, and of the Chambly Canal, including the Island of Montreal; all of which should be governed according to the Constitution now existing.

2nd. The next project deserving notice, is one of a more important and complex character, viz.:—a Legislative union of all the North American Colonies. Your Committee see much in this measure to recommend it to favourable notice, and as one of the most important advantages that would immediately result from it, is the establishment of "British Ascendancy," without any change in the principles of the existing Constitution.

There can be no reason now for feeling any delicacy or hesitation in speaking of visible and admitted facts, however ungracious or impolitic it might be to do so, under different circumstances. The Canadians of French descent in Lower Canada, are not loyal. The inhabitants of all the other North American Colonies, are loyal: as are also those of British descent in Lower Canada;—and they are so, not merely from the abstract sentiment of loyalty, or from interest, but because they glory in being British subjects; they feel that the safety and security of their lives and liberties depend on their repelling the encroachments of Democracy, which they detest; and because they see and feel the superiority they have over the neighbouring Republic in being governed by British laws; and they are convinced, that the stability of their institutions can be best secured, by maintaining the connection with the Mother Country.

If, then, the whole of these Colonies were so far united as to be represented in one Legislature, they would be enabled so to increase and distribute their resources for the benefit of all, that the abundance and facilities of national wealth would lead to and advance their common interest, and place them at once on a level with many powerful nations; their attitude also would be such as to constitute a salutary check on that system of self-government which placed in the hands of an irresponsible multitude, who disclaim obedience to any law that opposes their will, is now threatening in this Western hemisphere to overthrow all those barriers that have hitherto been regarded as necessary to the security of life, property, and that freedom which can only be called "glorious, when restrained by law."

If this measure should be considered as the one to be preferred for a final settlement of the Government of these extensive Colonies, the Imperial Parliament (through whose interposition alone it can be effected), should have its attention drawn to the necessity of considering, whether it would not be desirable to continue the Provincial Assemblies, with powers limited to the adoption of laws for their local and domestic government, separate from the questions of Trade and Commerce, and such matters as must necessarily affect the interest of all the Colonies. Your Committee can only say, that they entertain a decided feeling in favor of retaining local Assemblies, and they urgently recommend the expression of a similar opinion on the part of your Honorable House.

In connection with this point of inquiry, your Committee are strongly impressed with the conviction, that no act of our beloved Queen would give to her loyal and devoted Subjects in this remote part of her Dominions, more grateful evidence of Her Majesty's desire to perpetuate their allegiance, than incorporating in her Royal title, the distinct claim of Sovereignty over these Her Majesty's extensive and valuable possessions. Such an act would, your Committee firmly believe, have a powerful moral effect throughout this Continent, and serve more plainly and distinctly to draw the line between those sound, substantial, and we trust, enduring principles of Monarchy which may well boast their pre-eminence over the hollow and ever-varying fancies, that spring from a Democracy that is controlled by the un-English, unmanly, immoral and degrading system of vote by ballot, and the pernicious influence of Universal Suffrage.

Your Committee will dismiss this part of the subject, with this one other recommendation, viz.: that the title of the person who may henceforth be appointed to the Government of these Colonies, should be that of "Vice-Roy"—and that combined with integrity and talent, such as will at once command confidence and respect, he should always be possessed of high rank and distinction as a public man. There was a time when the Royal Dukes of the Kingdom did not consider the appointment of Captain General of British North America unworthy of their acceptance; it should be made the object of their ambition now.

3rd. Your Committee next proceed to the question of a union of the Provinces of Upper and Lower Canada. Were it not that the inhabitants of Lower Canada of British origin regard this project with much favor, and appear to consider it as the best measure for relieving them from the oppression under which they have long suffered from the conduct of the dominant faction in their House of Assembly, your Committee would at once declare their unqualified dissent; but we feel bound not to overlook or treat lightly any suggestion that offers a reasonable hope of relieving our loyal fellow subjects from their political embarrassments, which now, more than ever, claim our sympathy and consideration. Indeed we feel that unless a change takes place in the Constitution and system of Government in Lower Canada, it is next to impossible that either that Province or this can advance one step in improvement, and that those who desire to continue to live under the British Crown will be driven to seek some other place of residence.

If however the union should be that measure which the Imperial Parliament may ultimately determine upon, care must be taken that British ascendancy is securely established in both branches of the Legislature: upon no other terms can the measure be sanctioned by this Province; and this should be most clearly and positively stated to Her Majesty.

In what manner this ascendancy can be secured, your Committee abstain from offering any positive opinion. A variety of modes, however, may be suggested, founded on a division of territory, and the tenure by which lands are held in the two Provinces, and by restraining Freeholders in Lower Canada, holding lands by conveyance, from voting, until their titles are registered, as in the Upper Province. The introduction of the laws of England, and the use of the English language in all Legislative and Judicial proceedings should also be insisted upon; and lastly, it should be stipulated as a *sine qua non* on the part of this Province, that the place selected for the seat of Government should be within its limits.

Your Committee are sensible that there are many serious difficulties in the way of carrying the measure of the union into effect, in a satisfactory manner, arising from difference of religion, laws, language and general habits, in the two Provinces, but they believe these may be overcome, and general satisfaction in the end attained, by rendering them truly British Colonies, by the gradual influence of the changes necessary in the Institutions of Lower Canada, and the more general diffusion of education among the inhabitants.

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4th. The next measure which your Committee consider it necessary to remark upon, is the annexation of the Island of Montreal to Upper Canada,[1] which though last in their enumeration, they regard as far the most to be desired for the interests of this Province, and as they believe, for the benefit of the great body of the people in both Colonies.

With respect to the claim of right on the part of Upper Canada to a Seaport, it may be fairly asserted, that no single argument or just reason can be urged against it. The division of the Provinces of Upper and Lower Canada in 1791, which left this Province without an independent outlet to the ocean, was unquestionably a great political error, and has been the cause of difficulties and dissentions between the two Colonies, that have led to much mischief and even estrangement, that would not otherwise have happened. The motive for the division, as has been stated in a preceding part of this report, was a generous regard for the feelings and prejudices of the inhabitants of Lower Canada, and it is probable that as provisions had been made for the ultimate payment of the expenses of the Civil Government of both Provinces, by the duties imposed by the Act of 14 Geo. 3, chap. 88,[2] that the question of revenue (always a delicate and intricate one), did not appear likely to create the embarrassments that have since occurred.

The period, however, has arrived, when the condition of both Provinces imperatively requires, that the error committed should be repaired, and with the utmost possible promptness. Upper Canada has now attained a population of 450,000 souls, and its increase within the last few years has been such as clearly to shew, that in a very short time it will number as many inhabitants as there are now in the Lower Province; and that proceeding in a like ratio of increase, it will soon outstrip the Sister Colony as greatly in population, as it already has

[1] This proposal was frequently made during the contests between the two provinces.
[2] No. XXXII.

in commerce and general improvement. It will not be considered as an exaggerated statement to assert, that four-fifths of the exports at the Port of Quebec are supplied by Upper Canada—that of the one thousand ships and vessels that annually enter from sea, nine hundred at least are supplied with freight from this Province—and that our products constitute the chief articles of remittance made to the United Kingdom, in payment of the goods imported—and that of British manufactures, by far the greater portion brought to these Colonies is consumed and paid for by Upper Canada.

This statement of the comparative commerce of the two Provinces, founded on data which your Committee believe to be incontrovertible, in itself proves, that it is contrary to the plainest rules of justice, that all the Seaports through which this commerce flows, should be controlled by another Colony; but this is not the only evil of which this Province has to complain. The Legislature of Lower Canada has from time to time enacted laws and adopted regulations applying to the commerce of the Country, which have in effect greatly embarrassed the trade of this Province—such as imposing restraints in the export of its lumber, flour, potash, &c.—and in some instances, by the levying of a direct tax, as in the case of emigrants from the United Kingdom (since expired)—and on lumber passing down the St. Lawrence. The assumption of these powers has been objected to, and on different occasions protested against, by the Legislature of Upper Canada, as the unconstitutional exercise of power by one Colony to tax the productions of another, especially as in the instances mentioned, where the articles were merely in transitu to and from the Mother Country; these remonstrances, however, have not been heeded by the Imperial Government, to whom they were addressed, and the Legislature of Lower Canada having ceased to exercise the functions for which it was created, redress from that quarter can no longer be expected.

But by far the most painful motive for respectfully but earnestly urging the immediate concession of the claim of this Province to a Seaport, independent of all other control, remains to be stated.

Upper Canada confiding in the supremacy of the Institutions of both Provinces, and never supposing it possible that the state of anarchy into which Lower Canada has been thrown by the revolt of the disaffected there, and which so seriously affects every branch of commerce and all the sources of wealth and prosperity in both Provinces, could have occurred, did not hesitate to incur a heavy debt for the accomplishment of internal improvements of vast magnitude and corresponding value and advantage to the country generally, fully relying on the continued increase of its revenue from imports at Quebec and Montreal, as well as its own internal revenue, to discharge the interest upon the loans contracted. It is now, however, sufficiently certain from the state of affairs in Lower Canada, that revenue from that quarter must be greatly diminished; and in consequence Upper Canada finds herself reduced to the inevitable necessity of resorting to direct taxation, for the purpose of maintaining its faith with the public, unless it can obtain without delay, the concession of a plain and undeniable right, namely, a Seaport at which as in all other countries, the means of raising a revenue presents itself, free from the appearance of direct taxation, and where such a discrimination in the selection of articles for the imposition of duties can be made, as to cause whatever burdens may be created to fall on parties best able to bear them.

Apart from the claim of right to a Seaport, which Upper Canada confidently and earnestly urges, your Committee conceive that in granting it, no portion of Her Majesty's subjects will have the slightest reason to complain of injustice. It is not asked for purposes of oppression, or to despoil any party of any single right that in equity belongs to them: on the contrary, every reflecting and dispassionate man must be convinced, that by the annexation of the Island of Montreal to Upper Canada, the ship navigation of the St. Lawrence would be immediately completed to that place—that the improvement of the Ottawa, and other great channels of commerce, would be forthwith undertaken and carried into effect; and that in short one of the most effectual and certain measures for restoring prosperity and contentment throughout the country, would be the instant compliance with this claim.

Your Committee have no reason to doubt, indeed they have every reason to believe, that at least a large majority of the British population, which the annexation of Montreal and the country lying south west of the Ottawa and the

Chambly Canal, to Upper Canada, would bring within the influence of English Laws and English Institutions, would rejoice at the change that would be effected by the measure; and it therefore remains with the Imperial Parliament to determine whether the entreaty of 450,000 loyal subjects in Upper Canada, to have a plain and indisputable natural right conceded to them, and the corresponding wishes of perhaps 50,000 of their fellow subjects of like character in Lower Canada, should be refused or for a moment neglected, upon the single ground (your Committee can imagine no other) that the measure would be displeasing to a body of persons not exceeding one twentieth of the number of those who demand it—persons, too, who have grossly and ungratefully forfeited all claim to indulgence, and who have proved themselves unworthy of retaining the ascendancy that has too long been intrusted to them.

Your Committee have not hesitated, in remarking upon this all important subject, to express themselves with firmness and decision—not doubting but that our Gracious Sovereign and the Imperial Parliament will not ascribe the language they have employed to any factious or illiberal spirit, but to the single desire, with earnestness and sincerity, to point out the justice of their claim, and to prove that they are asking that which they know and feel to be their due, and which if withheld from them must be attended with the most disastrous consequences to their future peace and prosperity, and greatly diminish the value of these Provinces to the British Crown.

Having thus suggested their views upon the leading questions which they believe require consideration, in the adoption of measures for the restoration of these important Colonies, to a situation in which they may recover from the disastrous effects of recent rebellion, your Committee will advert to a very few points, not necessarily connected with either of the remedial measures remarked upon, but which in their opinion, are of importance in themselves, as tending to the strengthening and continuing of their connection with the Parent State.

1st. In the first place, it must now be manifest, that whatever policy may be adopted with respect to Lower Canada, whether by herself or in connection with any other Colony, an adequate Civil List must be provided, for the maintenance of the Civil Government, and the efficient administration of justice. Your Committee indeed have little hesitation in saying, that the relinquishment by the Crown of the power of paying its public servants, independently of an annual vote of the Assembly, is one, and probably the chief cause to which the recent rebellion in Lower Canada may be ascribed.

2nd. The granting of large sums of money upon the Address of the Assembly, at the commencement of each Session of the Legislature in Lower Canada, and which were asked for under the pretence that they were required to pay the necessary contingencies for carrying on the business of the House, when in fact it was well known that they were (at least to a large extent) to be employed in paying salaries to members of the British Parliament, who did not hesitate to prostitute the high station they occupied to the promulgation of slander and falsehood against the local authorities, to gratify the malignant spirit of traitors—was not only illegal and unconstitutional, but has, as is now too apparent, been productive of the most pernicious consequences, in corrupting the moral feeling of the people of that Province, and in giving encouragement to that spirit of revolt, which has at length exhibited itself in open rebellion.

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3rd. Your Committee now beg leave to draw the attention of your Honorable House to a subject to which they attach very great importance, and which is suggested in some degree by the observations contained in the preceding paragraph, viz.—the representation of the North American Colonies in the House of Commons, by Members chosen by themselves. The concession of this important point on the part of the Parent State, would, your Committee are convinced, be attended with numerous and incalculable advantages. In the first place, it would strengthen the link that now binds the loyal inhabitants of these Provinces to the Mother Country, by giving to them a share in the deliberations of the Councils of the Kingdom—by rendering more distinct and obvious the common interest that unites them, and by shewing that they are in reality a part of that Great Empire in which yet centres the hopes of mankind, for the preservation and protection of the civil and religious liberties of the world; their patriotic and praiseworthy pride would be encouraged, and their station would be exalted in

their own estimation, as well as in that of the British Nation. In the next place, it would place within the reach of the Imperial Government and Parliament, the best and most satisfactory means of obtaining information upon subjects connected with the trade and general interests of these vast, valuable and powerful Colonies.

And among many other advantages that might be enumerated, it would supersede all pretence for continuing the baneful and unconstitutional practice of employing agents, by whatever faction might be uppermost in the Representative branch of the Assembly of the respective Colonies, and afford opportunities for repelling the false and unauthorized statements of such Members of the House of Commons, as might venture upon declaiming upon the character and feelings of a people, who abhor their political sentiments, and whose notions of Government are utterly at variance with those entertained by unauthorized and ignorant intermeddlers in their affairs.

Should this suggestion be adopted by your Honorable House, and at your desire, by the Imperial Parliament—as your Committee earnestly hope it may; they offer it as their opinion, that the representation of the Colonies should be limited to two from each of the Provinces of Upper and Lower Canada, Nova Scotia, and New Brunswick, and one from each of the Islands of Newfoundland and Cape Breton—that they should be elected in joint Assembly by the Legislative Councils and Houses of Assembly of each Colony, at the commencement of every new Assembly, and continue Members for six months after the dissolution of the Assembly of the Colony for which they were elected.

4th. The next suggestion to which your Committe beg to draw the attention of your Honorable House, is the necessity (now too painfully obvious) of keeping up a respectable military force within both Provinces.

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5th. Your Committee feel that the duty that has been assigned to them by your Honorable House, would be imperfectly performed if they omitted notice of the inefficiency imputed by a large class of the most intelligent of our fellow subjects, to that department of Her Majesty's Government in England, to which the administration of the affairs of the Colonies are entrusted. In the observations your Committee may offer on this head of their inquiry, they cannot too distinctly disclaim any design to place on record a word or sentiment, that is not dictated by the single feeling of patriotism, and in that light they have no doubt your Honourable House will receive their opinions, and if adopted, transmit them to our Sovereign.

It appears to your Committee, that one of the chief causes of dissatisfaction with the administration of Colonial affairs, arises from the frequent changes in the Office of Secretary of State, to whom the Colonial Department is entrusted. Since the time the late Lord Bathurst retired from that charge, in 1827, your Committee believe there has been not less than eight Colonial Ministers, and that the policy of each successive Statesman has been more or less marked by a difference from that of his predecessor. This frequency of change in itself, almost inevitably entails two evils. *First*—An imperfect knowledge of the affairs of the Colonies, on the part of the Chief Secretary, and the consequent necessity of submitting the direction of important details to the subordinate Officers of the Department; and *second*—the want of stability and firmness in the general policy of the Government, and which of course creates much uneasiness on the part of the Governors and other Officers of the Colonies, as to what measures may be approved.

But undoubtedly by far the greatest objection to the system is the impossibility it occasions, of any Colonial Minister, unaided by persons possessing local knowledge, becoming acquainted with the wants, wishes, feelings and prejudices, of the inhabitants of the Colonies, during his temporary continuance in office, and of deciding satisfactorily upon the conflicting statements and claims that are brought before him. A firm, unflinching resolution to adhere to the principles of the Constitution, and to maintain the just and necessary power of the Crown, would do much towards supplying the want of local information; but it would be performing more than can be reasonably expected from human sagacity, if any man, or set of men, should always decide in an unexceptionable manner, on subjects that have their origin thousands of miles from the seat of the Imperial Government where they reside, and of which they have no personal knowledge

whatever, and therefore wrong may be often done to individuals, or a false view taken of some important political question, that in the end, may throw a whole community into difficulty and dissention; not from the absence of the most anxious desire to do right, but from an imperfect knowledge of facts upon which to form an opinion.

To these objections it may be answered, that although the Chief Secretary of State retires with a change of Ministers, the Under Secretaries (or at all events one of them), and the other subordinate Officers of the Department, remain and hold their offices permanently, and therefore information upon all subjects can be readily imparted to the superior by the gentlemen who are thus retained, and it may be admitted, that the knowledge of this fact ought to lessen the force of the objections that rest on other grounds; but it cannot be disguised that there is a growing impatience and unwillingness on the part of Colonists, especially in these extensive Provinces, to have the measures of Government, whether connected with their general system of Government, Legislation or patronage, controlled by persons who are utter strangers to them, not responsible in any way to themselves, or to the British Parliament, and who perhaps being advanced to their office from length of service, or other like cause, are not regarded as competent (perhaps unjustly) to manage and direct measures which they (the Colonies) deem of vital importance. Much of this feeling may be traced to pride—but it is a pride that springs from an honorable and laudable feeling, and always accompanies self-respect, true patriotism, and love of country, and it therefore ought not to be disregarded, nor should any attempt be made to lessen or control it, if it were possible to do so. But the imperfection that exists in the system of Colonial Government that prevails in England, is rendered more apparent by the want of that confidence that ought to be reposed in the distinguished Officers who from time to time are commissioned as Governors to different Colonies, than by any other fact that can be distinctly pointed out.

If the statements publicly made, and uncontradicted, be true, there are few Colonies from which Governors distinguished for eminent abilities and high character, have not been within a very short time withdrawn, or who have not been compelled to resign their office, in consequence of some disagreement with the Colonial Secretary; but as your Committee are not possessed of any official information upon which they can venture to remark, on the causes of these disagreements in other Colonies, they will confine themselves to a mere reference to the recall of Sir John Colborne, and Sir Francis Head, in this Province, and they lament that there is too much reason to adopt the sentiments expressed by the other branch of the Legislature, that the connection of each of these distinguished Officers "with the Government of this Colony has seemed incapable of being protracted, with satisfaction to themselves, beyond the period when it became evident that no submission would be made by them to a spirit of factious discontent, which nothing can appease but the destruction of British rule." But your Committee forbear adding anything to the opinion they have already expressed in a previous part of this report, of the policy and justice of these removals, further than to declare, that the measures lately taken with respect to this Province, and which have resulted in the resignation of the Government by Sir Francis Head, have more than ever established the conviction, that to ensure confidence in the wisdom and justice of Her Majesty's Government, some change must be effected in the administration of the affairs of the Colonial Department.

Your Committee conceive that this all important object would be best attained by—first, granting representation to the more important Colonies in the British House of Commons, as has already been suggested; second, by placing the administration of the Colonial Department in the hands of a Board, to be composed of a President (who being a Cabinet Minister may be removable on a change of administration of the Government), assisted by gentlemen of known probity and talent, selected, if not altogether, at least in part, from the Colonies, and who should retain their offices, notwithstanding a change of Ministry:—and, third, having selected gentlemen of undoubted ability and integrity, to fill the office of Governor, to extend to them a liberal and generous share of confidence—to rely upon their honor, and follow their suggestions, and not deprive them of office so soon as they are found to differ with, or are unreasonably complained against by the faction that happens to be in the ascendant in the Assembly or out of it. Had this confidence been accorded from the time of Lord Dalhousie's

administration to the present day, your Committee have no hesitation in declaring it to be their firm belief, that the hideous rebellion that has broken out in Lower Canada would never have occurred.

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All which is respectfully submitted.

HENRY SHERWOOD,
*Chairman.*

*Committee Room, House of Assembly,*
February 8th, 1838.

## XCVIII

## LORD DURHAM TO LORD GLENELG [1]

[Trans.: *Imperial Blue Books Relating to Canada* (1839). Vol. x.]

Castle of St. Lewis, Quebec,
August 9, 1838.

My Lord,

The information which my residence here has enabled me to obtain as to the condition of the two Canadas is of such a nature as to make me doubt whether, if I had been fully aware of the real state of affairs in this part of the world, any considerations would have induced me to undertake so very difficult a task as is involved in my mission. I do not, however, wish it to be understood that I consider success impossible. On the contrary, I indulge in a hope that if the difficulties and dangers that are now so apparent to me are appreciated by Her Majesty's Government, so as to lead to their adoption of measures sufficiently comprehensive and decided to meet the emergency, the objects of my mission may be accomplished.

My sole purpose, therefore, in adverting to circumstances which threaten a different result is to impress upon your Lordship my own conviction, which has been formed by personal experience, that even the best informed persons in England can hardly conceive the disorder or disorganization which, to the careful inquirer on the spot, is manifest in all things pertaining to Government in these colonies.

Such words scarcely express the whole truth; not Government merely, but society itself seems to be almost dissolved; the vessel of the State is not in great danger only, as I had been previously led to suppose, but looks like a complete wreck.

It is needless to point out the wide difference between this representation and the opinions on the subject which were, and probably still are, held by Her Majesty's Ministers; but since one who had the benefit of whatever information they possessed is nevertheless compelled to acknowledge that the truth, as it now appears to him, differs so much from his previous conceptions of it, what can he infer but that distance has precluded them from acquiring an accurate knowledge of the whole subject? This is my belief, and it becomes, therefore, an imperative duty on my part to convey to your Lordship the exact impressions which I have derived from personal inquiry and observation. I will not shrink from the performance of that duty.

On the present occasion, however, I propose to confine myself to a particular class of circumstances; that is, to those which relate to the Lower Province, and are of the most unfavourable character; my object in making such a selection being to state without reserve, in a separate despatch, certain facts and opinions, as to which, as coming from me, it is most inexpedient that any publicity should be given for the present: this despatch will therefore be marked "Secret".

The first point to which I would draw your attention, being one with which all others are more or less connected, is the existence of a most bitter animosity between the Canadians and the British, not as two parties holding different opinions and seeking different objects in respect to Government, but as different races engaged in a national contest.

This hatred of races is not publicly avowed on either side: on the contrary, both sides profess to be moved by any other feelings than such as belong to

[1] Durham succeeded Gosford as governor-general, but when he arrived in Canada in May, 1838, he had large additional powers as high commissioner. See Lucas, *Lord Durham's Report*, i., pp. 106 ff.

difference of origin; but the fact is, I think, proved by an accumulation of circumstantial evidence more conclusive than any direct testimony would be, and far more than sufficient to rebut all mere assertions to the contrary. If the difference between the two classes were one of party or principles only, we should find on each side a mixture of persons of both races, whereas the truth is that, with exceptions which tend to prove the rule, all the British are on one side, and all the Canadians are on the other. What may be the immediate subject of dispute seems to be of no consequence; so surely as there is a dispute on any subject, the great bulk of the Canadians and the great bulk of the British appear ranged against each other. In the next place, the mutual dislike of the two classes extends beyond politics into social life, where, with some trifling exceptions again, all intercourse is confined to persons of the same origin. Grown-up persons of a different origin seldom or never meet in private society; and even the children, when they quarrel, divide themselves into French and English like their parents. In the schools and the streets of Montreal, the real capital of the province, this is commonly the case. The station in life, moreover, of an individual of either race seems to have no influence on his real disposition towards the other race; high and low, rich and poor, on both sides—the merchant and the porter, the seigneur and the habitant—though they use different language to express themselves, yet exhibit the very same feeling of national jealousy and hatred. Such a sentiment is naturally evinced rather by trifles than by acts of intrinsic importance. There has been no solemn or formal declaration of national hostility, but not a day nor scarcely an hour passes without some petty insult, some provoking language, or even some serious mutual affront, occurring between persons of British and French descent. Lastly, it appears, upon a careful review of the political struggle between those who have termed themselves the loyal party and the popular party, that the subject of dissension has been, not the connexion with England, nor the form of the constitution, nor any of the practical abuses which have affected all classes of the people, but simply such institutions, laws, and customs as are of French origin, which the British have sought to overthrow and the Canadians have struggled to preserve, each class assuming false designations and fighting under false colours—the British professing exclusive loyalty to the Crown of England, and the Canadians pretending to the character of reformers. Nay, I am inclined to think that the true principles and ultimate objects of both parties, taken apart from the question of race, are exactly the reverse of what each of them professes, or, in other words, that the British (always excluding the body of officials) are really desirous of a more responsible Government, while the Canadians would prefer the present form of Government, or even one of a less democratic character. I shall have more to say on this head presently, having mentioned the subject here only for the purpose of citing another fact which tends to prove the existence of a deep-rooted national sentiment on both sides. Such a contradiction between the real and avowed principles of each party could not have occurred if all the people had been of one race, or if every other consideration had not given way to the sentiment of nationality.

This general antipathy of the Canadians towards the British, and of the British towards the Canadians appears to have been, as it were, provided for at the conquest of the province, and by subsequent measures of the British Government. If Lower Canada had been isolated from other colonies, and so well peopled as to leave little room for emigration from Britain, it might have been right at the conquest to engage for the preservation of French institutions, for the existence of a "Nation Canadienne"; but, considering how certain it was that, sooner or later, the British race would predominate in the country, that engagement seems to have been most unwise. It insured such a strife as has actually taken place; for, notwithstanding the division of Canada into two provinces, for the purpose of isolating the French, the British already predominate in French Canada, not numerically of course, but by means of their superior energy and wealth, and their natural relationship to the powers of Government.

It was long before the Canadians perceived that their nationality was in the course of being over-ridden by a British nationality. When the Constitutional Act bestowed on them a representative system, they were so little conversant with its nature, and so blind to the probable results of British emigration, that they described the constitution as a "machine Anglaise pour nous taxer," and

elected to the House of Assembly almost a majority of Englishmen. But with the progress of British intrusion they at length discovered, not only the uses of a representative system, but also that their nationality was in danger; and I have no hesitation in asserting that of late years they have used the representative system for the single purpose of maintaining their nationality against the progressive intrusion of the British race. They have found the British pressing upon them at every turn, in the possession of land, in commerce, in the retail trade, in all kinds of industrious enterprize, in religion, in the whole administration of government, and though they are a stagnant people, easily satisfied and disinclined to exertion, they have naturally resisted an invasion which was so offensive to their national pride.

The British, on the other hand, impeded in the pursuit of all their objects, partly by the ancient and barbarous civil law of the country, and partly by the systematic opposition of the Canadians to the progress of British enterprize, have naturally sought to remove those impediments, and to conquer, without much regard to the means employed, that very mischievous opposition. The actual result should have seemed inevitable. The struggle between the two races, conducted as long as possible according to the forms of the constitution, became too violent to be kept within those bounds. In order to preserve some sort of government, the public revenue was disposed of against the will of the Canadian people represented by their Assembly. The consequent rebellion, although precipitated by the British from an instinctive sense of the danger of allowing the Canadians full time for preparation, could not, perhaps, have been avoided; and the sentiment of national hostility has been aggravated to the uttermost, on both sides, by that excessive inflammation of the passions which always attends upon bloodshed for such a cause, and still more by this unusual circumstance that the victorious minority suffered extreme fear at the beginning of the contest, and that the now subdued majority had been led to hope everything from an appeal to force.

There seems to me only one modification of this view of the subject. The employment by the Canadians of constitutional and popular means for their national purpose, has taught some of them, consisting chiefly of the most active and able, higher political views than such as belong to the question of nationality. These men are not at heart friendly to the barbarous institutions of their ancestors, but would readily adopt a more enlightened system, if they could do so without losing their own importance. Their necessary dependence on the prejudiced mass has alone restrained them from joining in many of the views for the improvement of the country which are entertained by the British. They have also learned to estimate the practical abuses of Government which affect all classes, and to wish for many reforms without reference to Canadian nationality. They even had, to some extent, succeeded in disseminating their opinions amongst the mass of their countrymen, and they are not unlikely to play a valuable and distinguished part under any new system of government that may put an end to the strife between hostile races; but unfortunately, their number is so small as scarcely to affect my opinion of the temper of the Canadian people.

Supposing my view of that subject to be correct, your Lordship will readily understand that the bulk of the Canadian people are as disaffected as ever, and that the British part of the population regard the Canadians with vindictive jealousy. The Imperial Government is distrusted by both parties; by the Canadians because they fear, or rather expect in gloomy silence, that advantage will be taken of their late rebellion to remove the very causes of dissension, by giving a British character to the institutions and laws of the province, so that there shall no longer be any serious impediment to British colonization and enterprize; and by the British, on the other hand, because they doubt whether the Imperial Government will ever sufficiently understand the state of parties here, to approve of the great changes which must inevitably take place, if another period of legislative strife, and perhaps another rebellion, are to be averted.

And here I must notice a fact of great importance. The more discerning of the Canadians are perfectly aware that if the authority of the United States should ever extend to this country, whether by means of war or of a peaceful union, the peculiar institutions, and even the language, of French Canada would be extinguished as soon as possible, yet are they willing, with the exception perhaps of a considerable portion of the clergy, to incur the loss of all that they have held most dear, in order to gratify the sentiment of vengeance that has now

got possession of them. I would not exaggerate the amount of the sacrifice that they are willing to make for the sake of revenge. It is right to add, therefore, that, in my opinion, they almost despair, come what may, of preserving those ancient usages and that distinct nationality, in defence of which they have struggled so many years.

But be this as it may, whether they are moved by a sentiment of mere vengeance, or by revenge mixed with despair, I am well convinced that an American invasion of this province would be highly acceptable to most of them.

Satisfied of the disaffected temper of the Canadians as a people, I have naturally taken pains to acquire correct information as to the state of feeling in the United States as respects these colonies and the mother country.

All reports concur in assuring me that the present government of the Union, and a vast majority of the American people, are decidedly adverse to a rupture with England. Having already conveyed this assurance to your Lordship, I need not dwell upon it here; but there are points in the state of American feeling towards these colonies, and especially near the frontier, of so much moment as to require particular notice.

In the first place, although some persons in the States, and the more so if they have visited this country, are aware of the true nature of the late rebellion, it is a common opinion in America that the contention in this province has been between the executive government on the one hand, supported by a minority, and the majority of the people, without distinction of race, on the other; and that the subject of disagreement has been, practical grievances and general principles similar to those which formed the matter of dispute between England and her old colonies in America.

As their fathers rebelled in defence of those old English charters of local self-government, which placed local taxation and revenue at the sole disposition of popular assemblies, so they think that the Canadian majority was justified in withholding supplies, and in resisting by force the violation of their constitution by the British Parliament.

They believe, in a word, that the majority in Lower Canada has contended for the maintenance of popular rights, and that arbitrary government is the aim of the minority. The mistake is easily accounted for: it is only on the spot that one learns how the subject of strife in Lower Canada has been a question of nationality; everywhere else, the false professions and designations employed by both parties, combined with the plain fact that the contest has been between a majority and a minority, is apt to mislead the inquirer, by keeping out of view the distinction of races. If the whole subject were understood by Americans, they would probably sympathize with those who are of the same origin as themselves, who resemble them in numerous particulars, and who seek objects which, if this country were under American rule, would be unhesitatingly accomplished, as similar objects have been attained in the Dutch colony of New York, and the French colony of Louisiana.

There is no people under the sun to whom the feudal institutions and most defective civil laws of the Canadians would be more intolerable, than to the Anglo-Saxon race of the United States. But they have misunderstood the case. They have fallen into the not uncommon mistake of confounding means with ends. Believing that the means employed by the Canadians, in the Assembly, were constitutional and popular, and seeing that the British, being in a minority, necessarily clung to the local executive and the imperial authority; above all, regardless of the accident (for so it may be termed with respect to the question of nationality) by which the Canadians happen to constitute a majority, Americans have supposed that the objects of both parties in the colony were of the same nature respectively, as the means on which each party has relied. An ever active sentiment of national pride is, perhaps, the most remarkable feature in the American character. It might have been foreseen, therefore, that the Americans, proudly recollecting the origin and progress of their own revolutionary war with England, should sympathize with the Canadians or rather with the majority, who happen to be Canadians. Whether they may ever comprehend the false position assumed by both parties in this colony, I will not venture to predict; but so long as their view of the subject shall remain unchanged, they will, I believe, continue to sympathize with that side which has the air of contending for democratic principles and popular objects, and to wish that it may prevail over the other, which appears in the light of an oppressive minority.

Secondly: Having regard to the national pride of America, it is certain that the temper and tone of the British party towards that country tends to stir up angry passions throughout the Union, and especially near the frontier, where articles from the colonial newspapers are generally reprinted. Hitherto the national pride of America has not been deeply wounded by these means (and I do all in my power to mitigate the national influence of such affronts to it); but I am credibly informed that these unceasing attacks have not been without effect, and that they form a subject of growing irritation.

Thirdly: By the existence of a state of things out of which it is easy to see that war might spring, the American mind becomes more and more familiar with the idea of war. Differing as the Americans do, from all other nations, in the universal diffusion of an active interest in public affairs, and in a habit which belongs to all ranks, of calculation as to the future, they are led, by the political state of these provinces, to discuss the subject of war hypothetically, if I may use the expression; they are reminded of the events of the last war, and one of them in particular, the capture of Washington, which inflicted a deep wound on the national pride, and by frequently conversing on such exciting topics, they gradually approach that state of feeling under which the government, necessarily impelled by the people, would find it hard to maintain friendly relations with England.

Fourthly: It is not to be denied that the distracted state of these colonies occasions no little inconvenience to the frontier states, and to the federal government; it calls for an increase of the army, a sort of military array on the frontier, and the exercise of new powers by the executive, which are opposed to the habits, if not to the institutions, of the American people. All the expense and annoyance are attributed to the British Government. A dispassionate American admits that his government is bound, at whatever cost, to prevent aggressions on the Canadian frontier, and he does not deny that the obligation has been inadequately fulfilled; but when reminded of the inefficiency of the laws for that purpose, and the weakness of the American executive, he answers that the true source of every difficulty is the weakness of the British Government in Canada, which has not maintained order amongst its own subjects, nor is able to protect the United States from such a nuisance as arises from the conduct of British refugees within their territory. This retort, without stopping to examine its justice, suffices to show that, until order shall be restored in these colonies, a great cause of irritation in America will probably continue to operate with increasing force.

Fifthly: The boundary question, being much mixed, as it unavoidably is in America, with considerations arising out of the state of these colonies, forms a more active element of hostile feeling than would otherwise have been the case.

Lastly: It is certain that, amongst the frontier population of the United States, which, I should observe, has very greatly increased since the last war, there exists a numerous body of men, young, active, energetic, and self-relying, who, from various motives, long for an opportunity of invading Canada. Some of them are moved by an opinion, which it would not be easy to question, that if these colonies were laid open to American enterprize, a great impulse would be given to the industry and trade of that part of the States which now constitutes the frontier; some are influenced by one or other of the circumstances to which I have already adverted; some by that love of adventure merely which belongs to the American character; and some by a reasonable calculation of the gain and distinction which, in troubled times, usually fall to the most active and daring. The manner in which these people talk of invading the Canadas exemplifies the self-reliance of American citizens. They do not expect that the federal government should open the way for them by military operations; they even avow their belief that, in a contest of troops only, the British would surely prevail; but they reckon upon the friendly disposition towards them of great numbers on this side, and upon swarming over the line in such numbers, and at so many places simultaneously, as to get possession of the country in spite of military obstacles. I do not pretend to weigh such calculations, but state them as they have been reported to me. If I am not misinformed, it is well that I should remind Her Majesty's Government of the invasion of Texas by a body of American citizens, who, without the least aid from their government, have seized an extensive country, defeated armies, got possession of the soil, and established themselves, as a nation, with constitutional government, a judicial system and municipal institutions as complete as any in America. There is certainly no

immediate danger of such an attack upon these colonies; and I have mentioned the subject only for the purpose of indicating the probable character of the contest that would take place here, if all the causes now in operation should finally produce one. It was in consequence of all these important considerations that, during my late residence on the American frontier, I courted the most unreserved communication with all respectable Americans, for the purpose of impressing them with a more sound and accurate conception of the real state of things; with a more just appreciation of our system of government, and its real objects; and with a due sense of the danger which would arise to themselves, if their government remained a passive spectator of all these proceedings, tending as they did, to destroy all confidence in its executive strength, and all reliance on the national honour.

I am happy to say that my efforts have been successful, that a great change has taken place in public feeling on the American side, and that my exertions to restore tranquillity and good order are encouraged and supported by the most influential portions of the press and of society in the United States.

Except as it has been noticed for the purpose of explaining the temper of the Canadians, and one of the causes of irritation in the United States, a most important subject yet calls for your Lordship's attention; I allude to certain feelings and views of the British section of Her Majesty's subjects in this province.

Your Lordship is already informed of the general satisfaction expressed by the British party at my having, when I assumed the Government, avoided connecting myself with the old body of officials. It may be supposed that the body in question did not participate in that sentiment. I very soon became aware therefore of the existence of some difference between the official body and the British in general. Subsequent observation has convinced me that, except in their common hostility to the Canadians, there is no sympathy between these two classes.

That this should be the case is really not surprising when one discovers how all the powers of Government have been neglected and abused for many years past in this colony. Not to go further back than the commencement of serious differences between the Canadians and British as such; since, when the two branches of the legislature have neglected their proper functions to pursue the contest between races, a long time has passed without anything like beneficial legislation, and not a few of the many evils resulting from this perversion of legislative powers have, by a very natural mistake, been attributed to neglect and corruption in the Executive. At the same time it must be confessed, that the Executive has been both neglectful and corrupt. I need not remind your Lordship of those flagrant instances in which the Imperial Government has been led to interfere for the correction of administrative abuses, nor is this a fit occasion for entering on that subject in detail; but I am bound to add, that the Government of this province, including the administration of justice, has not obtained the respect of the people, and that, according to all my information, there has been ample ground for the distrust and suspicion with which authority is regarded.

This leads to another feature in the disposition of that portion of the British inhabitants which may be termed "independent". Their main object, as I have before explained, has been to remove the obstacles which the ignorance, the apathy, and the ancient prejudices of the Canadians opposed to the progress of British industry and enterprize; to substitute, in short, for Canadian institutions, laws and practices, others of a British character. In this pursuit they have necessarily disregarded the implied, not to say precise, engagement of England to respect the peculiar institutions of French Canada. But the Imperial Government, on the contrary, never quite forgetting that ancient pledge, has rather extended its protection to the Canadians than espoused the cause of the British settlers. It were to be wished, perhaps, that this policy had been consistently pursued from the beginning, as in that case a British community might not have grown up here with feelings, wants, and a degree of power which make it simply impossible to pursue such a policy now. But it has not been consistently pursued. By a variety of measures, and especially by promoting emigration to this colony, the Imperial Government have really undermined the Canadian nationality which they perhaps intended to preserve. A similar contradiction may be observed in their treatment of the national struggle which has ended in civil war. Never taking a decided part with either section in the colony, they have

wavered between them, now favouring the one and then the other, but neither decidedly, and finally displeasing both sections in about the same degree. Under such a system, if it may be called one, no governor could have pursued a consistent course, or have attached either the Canadians or the British to the Imperial Government.

I should not permit myself to say this reproachfully, even if there were room for an accusation, which in my humble opinion there is not; but I mention it as a necessary result of the original false step, and for the purpose of explaining the present disposition of the British party. Deeply offended at every measure or decision of the Imperial Government which thwarted their own British or Anti-Canadian views, they are also wanting in that respect for the supreme authority which is sometimes felt by the discontented subjects of a decided and vigorous Government. Restrained (though not entirely) from the public expression of their sentiments by a hope that the Imperial Government may yet accomplish the object on which their heart is set, they have no such reserve amongst themselves, nor do they at all care who knows of the language commonly held by them when speaking of the Imperial Government, and the connexion between this colony and the mother country.

I am assured that the leaders and their followers, one and all, are in the habit of declaring, that rather than be again subject to the French (meaning, rather than see another majority of Canadians in the Assembly), they shall find a way to take care of themselves.

I should be sorry to report any idle conversation upon such a topic, but have no doubt that language of this kind is commonly uttered with an earnestness of manner which should prove its sincerity. And this is not all: for the sentiments expressed are enforced by deliberate arguments, such as that, considering the exasperation of the Canadians produced by late events, there can be no permanent safety for people of British descent except by rendering the colony thoroughly British; and that if the Imperial Government should not provide for the security of its British subjects, the time will soon be past for obedience to any other law than that of self-preservation.

That such views are currently expressed amongst the British party, there can be no doubt; and I am the more disposed to believe them sincerely entertained, because, having reference to a future contingency, they are not inconsistent with those loud professions of loyalty and attachment to England by which the British minority has hitherto sought to enlist the Imperial Government against the Canadian majority. At present, of course, such views are merely speculative, everything being held in suspense by the large powers awarded to me, and by the hope of a happy settlement of affairs upon my recommendation.

Notwithstanding, however, the very unfavourable representations contained in this despatch, I am induced to hope with confidence, that success may ultimately attend the measures with respect to this country which have been recently adopted by the Imperial Government. My principal reason for this assurance is drawn from the good effect already produced by decided and vigorous action. The exercise of the very extensive powers placed in my hands seems to have operated as a sort of charm, like oil poured upon troubled waters. At this moment all is still. A stranger would hardly believe that the country had been recently distracted by civil war. Expectation for the future, is, I trust, taking the place of angry passions occasioned by the past. I must, however, conclude by assuring your Lordship, that whatever hopes I entertain of the future, depend altogether on the supposition that Her Majesty's Government and Parliament will not shrink from the adoption of permanent measures of remedy and prevention, proportioned to the greatness of the difficulties with which I have yet to contend, and will sanction such measures as will effectually provide for the abstraction of all legislation on British interests from the control of a French majority. I am of opinion that this great object can be legitimately effected without violence to Canadian rights, and in strict accordance with the soundest principles of constitutional government.

The time is fast approaching when I shall be enabled to bring these measures under the consideration of Her Majesty's Government; and in the meantime I recommend to their serious attention the important points to which I have referred in the present communication.

## XCIX

## THE INDEMNITY ACT, 1838 [1]

(1 & 2 Victoria, c. 112.)

*An Act for indemnifying those who have issued or acted under certain parts of a certain Ordinance made under colour of an Act passed in the present session of Parliament, intituled "An Act [2] to make temporary Provision for the Government of Lower Canada."*

16th August, 1838.

1 Vict., cap. 9. Whereas an Act was made this present session of Parliament, intituled "An Act to make temporary provision for the Government of Lower Canada": And whereas a certain law or Ordinance hath been made and published by the Governor of the said Province, by and with the advice and consent of the Special Council, bearing date the twenty-eighth day of June last, intituled "An Ordinance to provide for the security of the Province of Lower Canada," which Ordinance cannot be justified by law, but was so much intended for the Security of the said Province that it is expedient that all persons advising or acting under or in obedience to so much of the same as relates to the sending of certain persons to Bermuda, who are stated in the same to have made certain confessions, and to the subjecting such persons to restraint, should be indemnified by Parliament in the manner and to the extent hereinafter provided for: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that all personal actions and suits, indictments, informations, and all prosecutions and proceedings whatsoever, which have been or shall be prosecuted or commenced in any Court or before any tribunal in any part of her Majesty's Dominions, against any person or persons for or by reason of any act, matter, or thing advised, commanded, appointed or done in relation to the premises before the proclamation of this Act in the said Province of Lower Canada and in the Islands of Bermuda respectively, or elsewhere, in manner hereinafter provided, be, are, and shall be discharged and made void by virtue of this Act; and that if any action or suit shall be prosecuted or commenced against any person or persons for any such act, matter or thing so advised, commanded, appointed, or done, he, she, or they may plead the general issue, and give this Act and the special matter in evidence; and if the plaintiff or plaintiffs in any action or suit so to be prosecuted or commenced, except in that part of Great Britain called Scotland, after the first day of October next, shall become nonsuit, or forbear further prosecution, or suffer discontinuance, or if a verdict pass against such plaintiff or plaintiffs, the defendant or defendants shall recover his, her or their double costs, for which he, she or they shall have the like remedy as in cases where costs by law are given to defendants; and if any such action or suit as aforesaid shall be commenced or prosecuted after the first day of October next in that part of Great Britain called Scotland, the Court before whom such action or suit shall be commenced or prosecuted shall allow to the defender the benefit of the discharge and indemnity hereby provided, and shall further allow to him his double costs of suit in all such cases as aforesaid.

Indemnity for persons advising or acting under an Ordinance of the Governor and Council of Lower Canada, of the 28th of June last.

This Act to be proclaimed in Lower Canada and Bermuda respectively.

II. And be it enacted that this Act shall be proclaimed in the said Province of Lower Canada and in the said Islands of Bermuda by the Governor, or by the persons authorized to execute the Commission of Governor of the said Province and of the said Islands respectively, forthwith after he shall have received a copy of the same from one of her Majesty's Principal Secretaries of State.

[1] This act was passed to indemnify those who had any share advising or acting under lord Durham's ordinance of June 28, 1838 (Christie, v, pp. 166 ff.).

[2] See No. XCVI.

C

## ROBERT BALDWIN TO DURHAM, 1838

[Trans.: *Report of Canadian Archives*, 1923.]

Toronto, 23 August 1838.

My Lord

It is with great reluctance that I have brought myself to the determination of addressing Your Lordship with reference to the subject of the interview with which you were pleased to honour my father & myself on your late visit to this Province. And nothing but a belief that my abstaining from doing so after the gracious manner in which Your Lordship was pleased to invite such communication would be at once an abandonment of my duty to my country and an act of ingratitude to Your Lordship, could have induced me to depart from my resolution of avoiding any farther interference in the politics of the Province—

In departing from this resolution too on the present occasion I am labouring under the disheartening consideration that what I have to submit must be little more than a repetition of views & opinions which were formerly laid before the Home Government; and which were not only not adopted but were unhappily followed by Lord John Russell's Resolutions of 1837 [1]—Had the advice which on that occasion I took the liberty of offering been then taken, I believe few will deny that the late Rebellion would have been prevented—I now repeat that advice to Your Lordship with a solemn assurance of my belief that sooner or later it must be adopted, and those fatal Resolutions abandoned, or that England will continue to retain these Colonies by means of her troops alone—To my Letter to Lord Glenelg on that occasion, a copy of which is enclosed,[2] I take the liberty of referring Your Lordship not only because it contains all, which on the points embraced in it I have now to offer, but because by comparing it with the events which unhappily we have since had to deplore Your Lordship will see that I was not wholly mistaken in the importance which I then attributed to the adoption of the course which I recommended—Although I candidly confess that I did not anticipate an outbreak so immediate as subsequently took place—And be assured My Lord that although, to avail myself of an illustration of Your Lordships, he who is placed on an eminence may from the elevation of his position have a more extended view and be better able to judge of the relative positions of the several objects by which he is surrounded than the humble occupant of the valley below; it is the latter who has the best opportunity of observing the gradual crumbling of the snows at the foot of the Mountain which though slow and imperceptible except to the minutest inspection not the less certainly indicates the approaching avalanche—Your Lordship occupies the former and more responsible of these positions; the individual who now addresses you the latter—While therefore Your Lordship does not, I feel assured, overrate the power which you wield, I confess, with I may truly say the most unbounded confidence in Your Lordship's good intentions, I feel much alarm lest the remedies which that power may apply will either not reach the root of the evils under which we are suffering, or receiving a wrong direction leave those evils wholly untouched. And the short interview with which I was honoured while it increased my confidence in those intentions added much to my alarm for the result; because I thought I discerned if not a final opinion at least a strong bias in favour of a measure which in my own mind I am convinced can end in nothing but disappointment. The establishment of a general Legislative body for all the Colonies, unless as a preparatory step to making them independent, would in my humble opinion be worse than useless: And would unquestionably tend rapidly to bring about a separation from the Mother Country. The Imperial Parliament is the tribunal in whose hands should be retained all the powers of general legislation essential to the welfare of the Empire as a whole: And for all legislation of a local character the Legislatures of the respective Provinces will I am convinced be found the best adapted—If I express myself more strongly on this occasion than may appear decorous towards one of Your Lordship's exalted rank and character, Your Lordship will not impute it to any want of that respect which, conscious yourself of deserving, you will not believe me

[1] See No. XCIII. [2] See No. XCII.

capable of withholding; but to the true cause,—the deep importance of the subject itself to all that is dear to me—and I confess when I see the only man perhaps in the Empire who from his political reputation and peculiar position is in a situation to induce the Home Government to retrace its steps, concede to the Provincial Parliament its just influence in the direction of the local affairs of the Colony, and thus place the affairs of my native country upon a foundation from which permanent tranquility may be looked for, about as I believe to waste the energies of his master mind in an experiment of the failure of which I entertain not the slightest doubt I feel that I should be criminal if I did not in terms the most distinct and unequivocal express my entire and unqualified dissent to any such experiment being made—

Your Lordship has been the first statesman to avow a belief in the possibility of a permanent connection between the Colonies & the Mother Country—It is I confess not a little gratifying to me thus to have Your Lordship's high sanction to an opinion which I always entertained & avowed; although it has heretofore been treated as chimerical even by those most loud in denouncing the political opinions which I entertain as inconsistent with the continuation of that connection, and at once unconstitutional in their character and republican in their tendency—Your Lordship has gone farther you have said that the connection must be preserved—I sincerely feel grateful to Your Lordship for this announcement—It will I trust put an end to the repeated references to the arrival of a time when these Colonies must cease to be a part of the British Empire which have not unfrequently proceeded from the very servants of the Crown, and which I have no doubt have had an injurious effect in unsettling mens minds and directing their attention to the consideration of the republican frame of Government which under the expectation thus held forth their country was ultimately to possess and thus leading them to the adoption of republican rather than monarchical forms in the remedies which they have sought to have applied to the evils which they were or fancied themselves to be suffering—Hence I think may clearly be traced among others the call for an elective Legislative Council, than which I am convinced nothing could be more inefficient *of itself* as a means of removing the discontent under which the Province has been labouring; And nothing except the abolishing the Upper House altogether more fatal to the connection between the two Countries—

If Your Lordship then after the solemn announcement of the great principle that the connection *must* be maintained can but happily succeed in giving us a system which by its own working shall tend to establish & strengthen that connection you will have indeed done a great public service to your own Country but you will have conferred a greater far greater benefit upon these Provinces—If on the other hand however you unhappily fail in the latter point, you will by the former have only laid the foundation of one day a more protracted and therefore a more unhappy struggle—Fearful then is the responsibility which rests upon Your Lordship and therefore it is that I have not felt at liberty to withhold my voice humble as it is at the present momentous crisis—My views as to what is required are contained in the letter of which I send a copy. To which I shall only add that the opinions there expressed have been strengthened not weakened by subsequent observation—

Your Lordship must adapt the Government to the genius of the people upon and among whom it is to act—It is the genius of the English race in both hemispheres to be concerned in the Government of themselves— I would ask Your Lordship, would the people of England endure any system of Executive Government over which they had less influence than that which at present exists? Your Lordship knows they would not.—Can you then expect the people of these colonies with their English feelings & English sympathies to be satisfied with less —If you do Your Lordship will assuredly be disappointed—They can see a reason why their relations with foreign countries should be placed in other hands; but none why their domestic concerns should not be managed upon similar principles to those applied in the administration of the Imperial Government—It is in vain to direct their attention to this or that grievance—Many that have been harped upon in the political heat of the day as evils of appalling magnitude are no grievances at all and many others would cease to be such under the system proposed—You must place the Government in advance of public opinion you must give those in whom the people have confidence an interest in preserving the *system* of your Government, and maintaining the connection with the Mother

Country, and then you will hear no more of grievances because real ones will be redressed imaginery ones will be forgotten—But short of this all your efforts to produce harmony and all your exertions to preserve that connection will I am satisfied be wholly unavailing—

These are the views which I laid before Sir Francis Head when he sent for me on his first arrival in the Province—These views I again pressed upon the consideration of Lord Glenelg and Lord John Russell when in England in 1836, and I now again and for the last time would most earnestly urge them upon the consideration of Your Lordship as the only ones which would produce a system which, by adapting itself to the exigency of circumstances as they arise, would lay the foundation, if it be now possible to lay such foundation, of lasting tranquility—

To conclude My Lord with all the deference which becomes me when addressing your Lordship yet with all the firmness which I owe to my children and my country as a Canadian subject of Her Majesty I object first to the alteration of the Constitution in the minutest particular and secondly to the sacrifice of any single branch of the Royal Prerogative—Both of them are my birth right and I claim from Your Lordship the preservation of them in all their integrity—And lastly I claim to have applied to that Constitution and to have used in the exercise of that Prerogative the same principle of responsibility to the people through their representatives which is daily practiced in the Executive Government of that mighty Empire of which it is yet my pride to be a subject

With sentiments of the most profound respect

I remain my Lord
Your Lordships most
obedient humble Servant
ROBT. BALDWIN

The Right Honble.
The Earl of Durham
&c &c &c

## CI

## LORD DURHAM TO LORD GLENELG

[Trans.: *Imperial Blue Books Relating to Canada*, 1839. Vol. x.]

(EXTRACT OF A DISPATCH FROM THE EARL OF DURHAM, G.C.B., TO LORD GLENELG)

Dated—Castle of St. Lewis, Quebec,
16 October, 1838.

In my despatch (No. 68) which announced my intention of returning to England at an early period, for the purpose of resigning my commissions, I explained the grounds on which I had formed that decision after mature deliberation. I felt that the moral power of my government was so completely destroyed, and the difficulties of my position so greatly augmented by the proceedings of Her Majesty's Ministers and the Imperial Parliament, that the attempt to conduct the government of these provinces on better principles than those which have hitherto been adopted was one which must be made by other hands than mine. I grieve to find that I did not by any means exaggerate the probable effect which would be produced on the public mind on this continent by the occurrences in England. In the course of one week I have found the tone of the British inhabitants changed from the loudest professions of loyalty and attachment to the connexion with the mother country to a calm anticipation and discussion of the chances and consequences of separation. From the same mouths that a short while ago expressed the most passionate resentment of wrongs supposed to have been received from the people of the United States, I hear significant approval of the course which I have all along taken to conciliate the good-will of a kindred people, whose sympathies with the English race it is judged politic to cultivate. I have been startled at the rapid growth of this dangerous state of mind; and when the mass of the British population of this city were assembled to present me with an address, expressive of the kindest feeling towards myself, and the strongest condemnation of the policy which severs the official connexion between us, I shrunk from any other than a formal and deliberate expression of my feelings, from fear lest an indiscreet word or gesture on my part, or any one

of those unforseen accidents which carry large popular assemblies beyond the influence of human control, might lead to a general expression of the angry feeling that pervaded the excited numbers whom I beheld before me.

A perfectly different feeling exhibited itself at first among the French Canadians. They naturally exulted in the victory which appeared to have been gained by those who put themselves forward as their especial advocates in the mother country, and the disaffected rejoiced at perceiving that the arm of authority was weakened. Since the receipt of the first news from home which might lead them to believe, on high authority, that I did not really possess the powers with which they once imagined me to be invested, I can have no doubt that the disposition to secret machinations and preparations for insurrection, which had been for some time checked, has sprung into renewed activity; and though I do not feel much dread at the prospect of any unsupported attempts which the French population may make against the military force now in this country, I cannot doubt that there is now in existence an organization of the disaffected in this province, which may lend a most pernicious aid to any attack which may be made from without.

I have already forwarded to your Lordship an address expressive of the feelings of the delegates from the lower provinces of British North America; and the accounts which I have recently had show that the same feelings have been generally expressed in those provinces in the calm manner in which their happy immunity from actual civil war enables their inhabitants still to express their political sentiments; but throughout Upper Canada where the memory of recent suffering is fresh and vivid, and where the terror of near and visible peril constantly alarms the public mind, a more passionate and general feeling of regret and alarm has pervaded all classes. Unaccustomed to the state of feeling generated by actual insurrection, I have been struck by the extent of that terror with which all parties and all classes see, in the disturbance of my policy, the harbinger of a winter similar in its political character to the last. The sudden unanimity of all parties in that most divided province has been as alarming as extraordinary; for when those in power, and those who in attempting to snatch it from them advanced to the brink of rebellion, signed the same address,—when the leaders of the reformers seconded the resolutions moved by the heads of the family compact,—I could not but infer that an unanimity so strange must have been produced by the indication of sure and awful peril.

Of what nature that danger is, the enclosed communications from Her Majesty's Ministers at Washington will inform your Lordship. I grieve to say, that all the information which I have received within these few days, from all quarters, confirms the alarming intelligence conveyed therein. I have no doubt that the numbers, means and projects of the conspirators are greatly exaggerated, but I have little doubt also, that there is a great reason to apprehend that there has been suddenly formed throughout the bordering states, among a population capable of such enterprises, a widely ramified conspiracy, bent on repeating in Canada the scenes of Texas, invading the British dominions with a horde of those lawless and daring adventurers, who are to be tempted by the promise of sharing in the plunder of private and public property in these ample and fertile provinces.

It is of great importance that your Lordship and your colleagues should know the present state of feeling, both in these provinces and in the neighbouring states, and that you should know it betimes. I take, therefore, the opportunity which is afforded me by the postponement of the *Royal William's* departure, to supply you, though in a hurried manner, with the information which has reached me.

The mind of the British population throughout all the provinces has been deeply agitated by the prospect of a new change in the system of government. I am happy to be able to adduce the great number and the kind language of the addresses which I have received from all parts of the two Canadas, as proofs of the favourable feelings with which my policy has been regarded. Your Lordship must not imagine that I attach undue importance to documents so flattering to myself; for I feel that these are expressions of a deeper and more serious feeling than any that regards my individual conduct or treatment. The expressions of regret at my resignation, and of condemnation of the disallowance of my ordinance, proceed from those who disapproved of that part of my policy, just as much as from those who had most warmly supported it. The measures which I had adopted with a view to the disposal of the political prisoners had

been a long time in operation; and however freely they had been canvassed,—however much a certain portion of the population had thought it right to censure them,—that discussion had run its course, and all had acquiesced in a policy which they judged to be definitely adopted. The disturbance of this settled policy by the acts of the home Government has been regretted and condemned, not more by those who most cordially approved of the particular course adopted by me, than by those who originally wished that I had acted with greater severity. Both equally condemn the precipitate interference, which has obviously been undertaken in utter ignorance of the state of these provinces. They see with dismay that the difficulties which my policy had succeeded in removing are again placed in the way of the Government; that the authority from which they expected at least vigour and steadiness is powerless to enforce its determinations and to maintain the course on which it has entered; and that these unhappy provinces are, during the trying emergencies which are generally anticipated, to be still subjected to the mischievous influence of that wavering and temporizing policy which has hitherto paralysed the efforts of their energetic and loyal inhabitants.

Your Lordship will not be surprised to learn that regret is not the only feeling that has in consequence pervaded the British portion of the population, and that they have not beheld without anger their dearest interests thus made, as they express it, the sport of parties at home, who do not participate in either the danger or the desire to avert it. I have warned your Lordship, that the patience and the loyalty of our countrymen in these provinces may be tried overmuch; I have not been surprised, therefore, that their despair at the failure of that support which they had justly expected from home, has led them to think on what they can do for themselves; but I do assure your Lordship that I was not prepared for the extent of the change which I cannot doubt that these events have produced in the public mind here.

I am compelled abruptly to close this despatch, of the means of forwarding which, I received a very short notice.

## CII

## LORD DURHAM TO LORD GLENELG

[Trans.: *Imperial Blue Books Relating to Canada*, 1839. Vol. x.]

Castle of St. Lewis, Quebec,
20 October, 1838.

My Lord,

Since my despatch (No. 84) which I forwarded to your Lordship on the 16th inst., I have seen Sir John Colborne, and had the advantage of a good deal of communication with him on the present state of affairs. His information respecting the probability of serious disturbances during the ensuing winter, I am sorry to say, tallies very exactly with that which I have received from all quarters; and his opinion of the gloomy aspect of affairs is just as strong as that which I have lately endeavoured to impress on your Lordship. I am happy to say that the most perfect understanding continues to prevail between us. Looking on him as the person with whom the whole conduct and responsibility of the Government during the next six months will in all probability rest, I have thought it best for the public service that he should enter as speedily as possible on that course, by which he purposes to maintain the tranquillity and the possession of these provinces. I have requested him at once to take whatever military precautions he may deem necessary for enabling him to carry out his own views for the security of the provinces, against foreign invasion, or internal disaffection. He has readily availed himself of this offer, and is busily engaged in taking steps for calling out the volunteers and guarding the frontiers. The indications of mischief are so numerous and so urgent, that it is no longer possible to conceal, or advisable to attempt concealing, the consciousness of danger entertained by the Government; its only course is openly and resolutely to proclaim and avert that danger. The early adoption of these measures of military precaution must of necessity entail great expense on the Government. It will too clearly demonstrate to the province and to neighbouring states the melancholy condition of its internal and external relations; and it will in all probability produce a state

of things in which the present exasperation of parties will be aggravated by fresh causes of irritation; but these are evils which must be borne, if we mean to provide, as far as is in our power, for the retention of the two Canadas. While, therefore, I cannot but lament the necessity of them, I must approve the adoption, under existing circumstances, of these measures by the Commander of the Forces.

The result of my communication with Sir John Colborne, as well as of fresh intelligence which I have received, has been a confirmation of the propriety of my relinquishing the government of these provinces. It is quite clear that at the present season it is useless for the Government to occupy itself with any schemes of extensive and permanent amelioration. The sole object of its care must for the present be the retention of the province during the winter. As this must be attained by military means, the business of my pacific mission is, if not at an end, in abeyance; and it is best that for a while the civil and military authority of this province should be in the same hands. A civil governor here would, during the next six months, have no legitimate business, save that of rendering that subordinate aid to the military authorities which will be better secured if the entire direction and responsibility be allowed to rest with the Commander of the Forces; and this is also Sir John Colborne's view of the case. My only sphere of utility to these colonies must, I am more than ever convinced, be henceforth in the Imperial Parliament, where, if I can force on the knowledge of my countrymen the true state of these provinces, and the true policy to be adopted for their future good government, I may contribute towards rendering available the last opportunity which I believe will ever be afforded to Great Britain of maintaining an useful and honourable connexion with her possessions on the North American Continent.

With this object in view, I think it my duty to return without any delay. I have therefore, with great regret, on public as well as private grounds, abandoned my intention of visiting the United States, where I hoped that my communication with the President might be of service. I now intend to sail from this port in Her Majesty's ship *Inconstant*, direct to England, on the 3rd of November.

The nature and extent of the danger with which Sir John Colborne will probably have to contend, I endeavoured to point out to your Lordship in my despatch (No. 84), which I prepared at a few hours' notice, availing myself of the postponed departure of the *Royal William*. Time and deliberation have not enabled me to supply your Lordship with more precise information on the points on which I then touched, for the fresh intelligence which every day brings is of the same vague nature, and confirms our belief in the existence of unknown perils, without informing us as to the time, the mode, and the extent to which we are to be exposed to them.

There is great danger to be apprehended from the rapidly increasing familiarity with which the idea of separation from the British empire is expressed and canvassed by the British in these provinces. I do not mean to disparage their severely tried and well proved loyalty to the Crown and attachment to the British empire. Their preference of monarchical institutions, their affection for the mother country, are as strong as ever; but their hope of maintaining either has been suddenly and materially weakened; and in this state of feeling they naturally look with great anxiety to the form of government under which it is possible they may soon have to live, and to the connexions which they may be under the necessity of forming when the ties of their present dependence are severed. The chances and the desirableness of the different possible results are daily canvassed among them; their minds become familiarized with the thoughts which a short time ago they held it a crime to entertain; and however favourable the decision of their judgment may be, the strong feeling which bound them to the British empire is weakened by the mere fact of its soundness becoming a matter of question.

To what extent this feeling prevails, or how soon and in what form it may exhibit itself, it is impossible to say. It is one of no recent growth. Do not imagine, my Lord, that it owes its origin to my recall, or that it could be obviated by my retention of the government. Long lurking in the minds of even those inhabitants of these provinces in whom it had not been openly manifested in the course of the late discontents and disturbances, it was in great measure removed by the apparent indications of a better policy, which were hailed in the appointment of a Governor armed with the extensive and sufficient powers which I

was supposed to wield when I landed on these shores. This feeling has sprung into sudden and rapid growth from the hour in which the public was disabused as to the extent of my previously exaggerated powers by the weightiest authority in the British legislature, which deprived me of moral influence by asserting without contradiction, that I "possessed only the ordinary legal powers of a common Governor." From the same moment and from the same cause sprang the other feelings of which the wide diffusion among perfectly different classes menaces even greater danger.

The same cause called into renewed and vigorous action the hopes of the disaffected in both provinces. Of the designs of the disaffected within the Upper Province we know nothing. In this, the indications of conspiracy and dangerous designs are numerous and undeniable. A formidable organization bound together by secret oaths and secret signs, undoubtedly exists, and extends over the French population, at least of the district of Montreal. The object of the oath does not appear to be specific; it merely binds the conspirators to be ready to obey whatever orders they may at any time receive from their chiefs. When this machinery is to be called into action does not appear. I am, on the whole, inclined to be of opinion, that there is no intention of immediate outbreak in this province, unless in case of invasion from without; to that it is at all times ready to serve as a formidable auxiliary; but in the meantime it produces all the alarm which actual insurrection would occasion. Terrified by signs of this formidable and mysterious organization, and sometimes by secret menaces or warnings of murder and massacre, the loyal inhabitants of the country quit their exposed and isolated habitations, and either at first seek refuge in the towns, or at once secure their safety by quitting the British dominions. In both provinces alike this emigration, from utter insecurity of person and property, has taken place to an alarming extent; and both provinces have thus been, to a great extent, deprived of the most valuable class of their inhabitants, of those whose peaceful energies contribute most to their improvement, and who most demand and deserve the steady protection of a parental government.

The same cause has given life to the worst spirit among the bordering population of the United States, and extended, if not created, that formidable secret combination, of which the existence has been announced to me, not only by a host of concurrent and consistent private communications, but by the most solemn warning which the government of the United States could give.

I do not believe that this conspiracy is the result of that somewhat generous, but utterly misdirected, sympathy which last winter prompted our republican neighbours to interfere in behalf of a people whom they erroneously imagined to be making a hearty struggle for liberty. It seems rather to result from the aspect of the weakness of the Government in these provinces, which has latterly been presented to the bordering population, and which offers to the ambition or avarice of the bold and lawless settlers of the American wilderness the ample and fertile lands which appear to invite occupation by the strongest. They think to repeat the conquest of Texas from a nobler foe, with proportionately greater means of aggression; and if they know that they will have to contend with something more than a Mexican army, they count on an internal aid, which was not found in the solitary wilds of Texas.

That this is the nature of their views and plans I infer, not merely from the direct information which I have received, but from the fact that the first indications of these machinations were observed just at the period in which the first debates in the House of Lords convinced the ill-intentioned here, that they need not apprehend a vigorous and well-supported government in Canada.

Such are the internal and external prospects of a country, respecting which, in my despatch of the 9th of August, I thus expressed myself:—"The exercise of the very extensive powers placed in my hands seems to have operated as a sort of charm, like oil poured on troubled waters. At this moment all is still; a stranger would hardly believe that the country had been recently distracted by civil war. Expectation for the future is, I trust, taking the place of angry passions occasioned by the past."

This was, at the time, a true description; I stated nothing but what correctly described the state of things in these provinces. I could not know that at that very hour events were passing at the other side of the Atlantic which would call into renewed and fearful activity the smothered embers of universal strife, and reverse the fair order of things which I had so diligently laboured to establish.

## CIII

## LORD DURHAM TO LORD GLENELG

[Trans.: *Imperial Blue Books Relating to Canada*, 1839. Vol. x.]

Her Majesty's Ship *Inconstant*, at Sea,
10 November, 1838.

My Lord,

I have the honour to inform your Lordship that I had, on the morning of my departure for Quebec, an interview with Mr. Sheriff M'Donnell, who had arrived the night before from Kingston, Upper Canada, for the purpose of communicating to the government the alarming intelligence of the existence of a great unwillingness on the part of the militia and volunteers of Upper Canada to tender their active services.

Mr. M'Donnell informed me that the belief amongst them of the indifference of the British Government to their fate was so general, that they deemed it useless to make any exertions to maintain the connexion with the mother country. He also said that nothing but a declaration from me, of the intentions of the British Government having been misunderstood, would induce them to enrol themselves for the defence of the province this winter. I had no hesitation in assuring him that no trace of that indifference would be found in the measures adopted, or the precautions taken by the government over which I presided, and that I could not imagine the existence of a different feeling in the minds of the British Ministers.

I trusted, therefore, that the same alacrity as was before manifested would be evinced by all classes in the Upper Province, in coming forward for the maintenance of the public security.

Mr. M'Donnell stated himself to be perfectly satisfied with my declaration, and was to return to Kingston the same evening.

I regret to state, with reference to this subject, that the feelings expressed by Mr. M'Donnell are also very generally entertained by the British population in Lower Canada.

I have, etc.
(Signed) DURHAM.

## CIV

## REPORT OF THE COMMITTEE OF THE LEGISLATIVE COUNCIL OF UPPER CANADA ON LORD DURHAM'S REPORT

[Trans.: *Journals of Legislative Council of Upper Canada*, App. G.G.]
May 11, 1839.

*The Select Committee* to whom was referred the Report [1] of the Right Honourable the Earl of Durham, Her Majesty's late *Governor-in-Chief* of British North America.

*Respectfully Submit the Following Report*:

In discussing the report of Her Majesty's late High Commissioner on the affairs of Upper Canada, your Committee are fully aware, that their observations cannot be understood by your Honourable House, as conveying any censure on Her Majesty's Commissioner, who commences by informing Her Majesty, that his information, respecting the state of Upper Canada,[2] had not been acquired in the course of his actual administration of the government of that Province, a fact to which the report itself bears ample testimony. His Lordship observes that, "it is very difficult to make out from the avowals of parties, the real objects of their struggles, and still less easy is it to discover any cause of such importance, as would account for its uniting any large mass of the people in an attempt to overthrow, by forcible means, the existing form of government." From the first part of this paragraph it appears, that the political parties into which the

[1] The *Report* was officially communicated to parliament on February 11, 1838.
[2] See *Report*, vol. ii (ed. Lucas), pp. 145–93, where the report on Upper Canada is historically examined in the notes.

Province is said to be divided, have no very strong ground for complaint, otherwise some definite description thereof would doubtless have been given to his Lordship; who, in the latter part of the same paragraph, insinuates that a large mass of the people of Upper Canada were desirous of overthrowing the government, a fact totally unknown in this Province, and already sufficiently refuted by the conduct of the people. His Lordship then informs Her Majesty, that Upper Canada "has long been entirely governed by a party commonly designated through the Province as the 'family compact,'" and that, "there is in truth, very little of family connection among the persons thus united." Why then should his Lordship give his assistance in the dissemination of any such erroneous idea, as that title has been used to propagate? His Lordship does not appear to have understood, that the object of the Press in adopting the term of "family compact," as a name by which to designate "the Bench, the Magistracy, the holders of the high offices of the Episcopal Church, and a great part of the legal profession, the possessors of nearly the whole of the waste lands of the Province, the people all powerful in the chartered Banks, and sharing among themselves almost exclusively all offices of trust and profit," intended to impress their readers with the idea, that a close family connection did exist among all the persons in authority throughout the Province, and that if it were not so understood the force of the epithet would be altogether lost; for throughout his Lordship's Report "the family compact" is blazoned forth with studious pertinacity, although the inaptness of the title had been previously admitted.

The High Commissioner next endeavours to show, that all persons of education, and more especially members of the learned professions, ought rather to settle in the United States than in Canada; a Surgeon, for instance, because he must show that he is duly qualified before he can be permitted to practise within this Province; an Attorney, because he is not permitted to practise therein as a Barrister; and a Barrister, because he is not allowed to act as an Attorney.

Your Committee are of opinion, that in all these regulations the legislature has shown a proper and praiseworthy desire to prevent ignorant pretenders to medical and legal knowledge, disturbing the animal economy or social condition of Her Majesty's subjects. Then comes his Lordship's list of British grievances, which is altogether remarkable; he complains of the Banking system, in which he says the Canadian party are supreme (a large portion of the stock in the most ancient of the chartered Banks is, however, owned by persons residing in England), and further asserts, that the influence of the Banks "is said to be employed directly as an instrument for upholding the political supremacy of the party" (Canadian)—Your Committee happen to have the means of personally knowing, that the chartered Banks have most studiously avoided political connection with all parties.

Your Committee find introduced as one of the grievances, "that under the system of selling land pursued by the government, an individual does not receive a patent for his land, until he has paid the whole of his purchase money." Why should a contrary course be pursued? That is not shown! The High Commissioner then wanders into Illinois, and gives a vivid description of the peculiar advantages to be derived by English folk, who may become domiciled in the republic. If indeed his Lordship had not qualified his opinions with the assertion that, "but few cases in which the departure of an Englishman from Upper Canada to the States, can be traced directly to any of these circumstances in particular," alluding to the British grievances before mentioned, your Committee would have supposed that the peculiar functions of Her Majesty's High Commissioner were not those detailed in his commission, the more especially, as these hitherto unheard of grievances are quoted as the cause of the decreased immigration from the Parent State; and throughout the Report, comparisons are constantly drawn unfavourable to Her Majesty's possessions in North America.

Your Committee having exposed a few of the inconsistencies in the first pages of his Lordship's Report, deem it unnecessary to enter more fully into its details, the conflicting character of which, as compared with his Lordship's other productions, is sufficiently set forth in the report of the Committee on the state of the Province, appointed by the House of Asssmbly: observing, however, that his Lordship sums up the Upper Canadian grievances in the great practical question of the Clergy Reserves. Your Honourable House, has, so recently, had this question under discussion, that your Committee refrain from any commentary on his Lordship's statements regarding it, but your Committee cannot avoid observing,

that however unintentional, his Lordship's remarks are evidently calculated to cast odium on the Established Church of England, which, like every other respectable body throughout the colony, has been constantly assailed by the party mis-named Reformers.

Adverting, now, to his Lordship's great panacea for all political disorders, "Responsible Government," your Committee beg to observe, that a liberal minded Englishman, sincerely admiring the great principles of the British Constitution, would naturally be desirous of extending them, theoretically and practically, to all people living under the dominion of the Crown; and at the first view, would be apt to ascribe any evils which were found to exist in any portion of the Empire, to the absence of those political institutions, which he is bound to uphold in the administration of public affairs, in the metropolitan and supreme government.

It is in this manner we must account for the adoption, at first sight, by many statesmen, of the principle, that the officers administering the government should be under the same popular control in colonies, as the like persons necessarily are in those societies, where powers of supreme legislation, by means of popular administration, are found to exist; but it is to the practical impossibility of preserving colonial relations on such a plan, that we must attribute the fact, that notwithstanding all the changes produced by the struggles of party, or the alternations of conservative or liberal politics in England, no statesman, armed with the authority, has, as yet, attempted to introduce the principle of responsibility of government to the people, into the colonial system.

After an attentive and disinterested consideration of this subject, your Committee are led to the conclusion, that the adoption of the plan proposed by the Earl of Durham, in which this is the prominent feature, must lead to the overthrow of the great colonial empire of England.

The control exercised by the popular will, over the administration of affairs in Great Britain, and over the choice of persons by whom the government shall be conducted, is founded, not upon theory, but upon the practical necessity of carrying on a government according to the will of that power in the constitution, which, right or wrong, can most effectually control it. Simple responsibility of the executive functionaries, and their liability to answer for misdemeanors or mistakes, existed in England long before the popular branch of the legislature assumed its present powers; and in fact, the trial and punishment of ministers, or in other words, their actual responsibility was much more frequently exhibited when the Sovereign was independent of the people, than since the British constitution has been, by the necessities of the Crown, moulded into its present form.

This latter responsibility the colonists have: it is now proposed to bestow on them the former.

No one can be blind to the fact, that it is amongst those who advocate the doctrine, that colonies are useless and burdensome, that responsibility of the government to the people finds its warmest supporters. Lord Durham holds a contrary opinion, and yet he advocates popular government!

That the colonial possessions of England are of immense importance, and essential to the continuance of her greatness and prosperity, few, we believe, are prepared to deny. In support of that opinion, your Committee will, however, quote a favourite expression of the Earl of Durham, after his lordship had seen the Canadian possessions of the Crown, and become sensible of their value—"England, if she lose her North American colonies, must sink into a second-rate power."

According to the present system, the governor of a colony exercises most of the royal functions, under the general direction of the ministers of the crown; he is strictly accountable for his conduct, and for the use he makes of the royal authority—he recommends for office persons in the colony, or appoints those selected by the minister: and he endeavours to conduct his government according to the policy of the imperial cabinet, with a view to the present prosperity and future greatness of a country in which England has a deep interest; and above all things, with the intention of preserving, against all opposition, the unity of the empire.

To enable him to fulfil these great duties, it is obviously his interest, and that of his advisers, to keep on his side the popular voice of the colony, and to avoid giving occasion to discontent—redressing real, and dissipating, by temperate discussion, all imaginary grievances.

According to the system proposed by the Earl of Durham, the advisers of the Lieutenant Governor would not be officers who, in accordance with the policy of the home government, endeavour to aid the Lieutenant Governor in conciliating the affections of the people; but they must be the creatures of the prevailing faction or party in the Assembly—advising the Governor altogether with the view to the wishes of the House for the moment, regardless of the opinions of the supreme Parliament, or those of the Imperial Cabinet—and having (though nominally subordinate) the power of forcing all their measures upon the Governor.

The colonial Governor must, in this case, be left without discretion or responsibility, and follow whatever changes may occur; in his colony he could take no directions from the minister of the crown, nor, indeed, communicate with the supreme government, unless in the terms dictated by his responsible advisers, to whose directions he must submit, far more completely than the Sovereign to the advice of the cabinet. The real Sovereign, and the supreme cabinet, are lost sight of and forgotten, in the administration of public affairs in the colony: and thus the responsibility to Parliament, which in England is produced by, and consistent with the powers of supreme legislation, being introduced into a colony where the supremacy in the legislative body does not exist, the weaker body, in fact, is by a political fiction, made the stronger. The dependency of the colony is at an end; and while the Sovereign no longer possesses a confidential servant in the colony, the ministers of the crown, who are responsible for the preservation of colonial connection, lose all authority to fulfil the duties of their office.

Either this must be the course pursued by a Governor, with responsible advisers, or he must think for himself, independently of those advisers: and, as a matter of course, throw himself for information and advice, upon irregular and unknown sources. In such an event, the responsible advisers resign—they have, perhaps, a majority in the Provincial Parliament; but they may, notwithstanding, be very wrong. Then comes a dissolution of the Provincial Parliament, and, perhaps, an expression of public opinion, by a bare majority, against the government—and probably, inimical to the interests of the empire. Who, then, is to yield? The government must, in fact, retire from the contest, whether right or wrong, or carry on public affairs without any advisers or public officers.

This cannot be done: so that, after all, the governor of the colony must be responsible to the prevailing party in the colony; and, so far as the empire is concerned, he becomes the sovereign of an independent realm—having no discretion, and therefore no responsibility.

Under such a system, colonial dependence would practically be at an end. If it be resolved, then, to force upon us an independence not yet courted, why subject the colonies to the few miserable years of transition from monarchy to democracy, which must inevitably follow? Why subject the colony to the dissensions of party? Is it to foster a spirit of undying enmity among a people disposed to dwell together in harmony and peace? Far better would it be to unite them at once to an empire which, though rival, and perhaps inimical to England, would, in such case, interfere sufficiently between contending parties, to save them from each other.

If England withdraw her influence, and leave her governors to be the shuttle between colonial parties, no loyalty now existing among any of these parties will prevent their seeking another influence in the neighbouring republic, to replace the one needlessly withdrawn; and as the French of Lower Canada sought the alliance of their ancient enemies, the Anglo-American population of the neighbouring States, to give them the means of overwhelming the British population—for the time left without the countenance or support of the British government—so will the losing party, in either colony, seek some external influence to aid their cause. England refuses the umpirage, and there can be no doubt but that it will be readily offered, before many years, to the United States.

Ireland and Scotland had once independent legislatures; but never, when under the British crown, had they anything approaching to governments responsible to their respective people—yet the government of them became impracticable, the moment it approached to a participation of equal political rights, and they were united with England, because government in the different parts of an empire, must be conducted with a view to some supreme ruling power, which is not practicable with several separate and independent legislatures.

The plan of the Earl of Durham is to confine the functions of the local legislatures to affairs strictly colonial, but this limitation of powers is not practicable under his Lordship's system.

It is perfectly true that it is not for the interest of England to maintain a continual struggle with the local legislature, for the purpose of upholding any class of persons in the colonies, as the servants of the Crown; but it is no less true, that the honour and interests of the Empire are intimately involved with local administration, and that if Governors of colonies are to be left unsupported by the Imperial Government, and to have their advisers chosen for them by the prevailing party, the usefulness of the Governors must be at an end,—there must either be continual collision between them and the other public servants in the colonies, or the Governors must yield up their judgments and consciences to the keeping of the factions which agitate the countries they are appointed to govern.

In small communities, the future is continually sacrificed to present convenience, but the very temporary nature of the interests which influence the politics of a country like this, with a changing population, with no barriers between the inception of public will and its expression—the comparatively little personal influence held by any, from considerations of property, or personal attachment—the ephemeral character of the topics which sway elections and elevate men for the moment into public favour, with almost a certainty of sinking with the reflux of the wave which lifted them into view, operate against the growing up of that steady influence capable of giving stability to politics, or of defining the views of party. The people are individually essentially free—free from landlords—free from employers—free from the influence of great wealth, as well as from that of high station in the few; every man does as it seems best in his own eyes. The consequence is, that it is scarcely possible to know, for any continuance, what the views of the prominent parliamentary men are, except on a few questions: no considerable number of them think alike, and all, by turns, find themselves in a minority many times during a parliamentary session.

This state of things does not arise from any modification of political institutions, but from the individual independence of the population—caused by the ease with which landed property is acquired. In England, political leaders think for the people: in America, the people think for the members of Parliament; and as the people is not bound to consistency, like individuals of note, its appetite for change, and for the proposal and attempt to carry absurd and extravagant measures, is, and must be gratified from time to time, "non obstante" the consistency of politicians.

The same course of politics is found in the United States, where the President, the Senate, and the House of Representatives constantly find their measures negatived by each other, and where members are constantly instructed by their constituents, according to the popular whim of the hour. We therefore do not find what is strictly called Executive responsibility, or necessity of continual accordance of government with the popular voice; and measures have, even between the short intervals of the Presidential elections, time to be popular and unpopular, two or three times over. The French Canadian party form, perhaps, the only political combination in America with consistency of principle, and this is because they have leaders who direct the general opinion. They are consequently the only party whose representatives could by any possibility lay down any tangible principles upon which they would conduct a government. In this Province, as in the United States, popular will must influence the conduct of government in all things not essentially wrong or chimerical, and in these the government must be strong enough to resist, and be known to have the power of resistance for a sufficient time, to permit more cool and quiet consideration on the part of the constituency.

A curious example of this species of legislation is found in a discussion, which has occupied a great part of the present session, on the absorbing topic of the Clergy Reserves. It has been taken up and discussed upon principles of liberality and concession, on all sides; the parties, unable to agree upon any mode of appropriation, have, as a final measure, referred the issue to the Imperial Parliament.

It would be almost impossible to enumerate the various modes of distribution proposed, with and without the approbation of government, on this question, which would undoubtedly, in English politics, be considered one upon which the

existence of a ministry must depend. Suffice it to say that, almost every member had a plan of his own; some had two or three plans fresh from their constituents —yet, strange to say, the house could not agree,—that is to say, there was a number sufficient to negative every plan proposed, and to prevent the reference of the matter to England, up to the last day of the session.

In this paradoxical state of affairs, which of the contending parties should form the colonial cabinet?

This, or something approaching to it, not being an unusual condition of politics, it may easily be supposed that few, if any persons, possess sufficient influence to conduct affairs; and from this state of things, it is to be presumed, has arisen the practice in all colonial governments with legislatures, of the governors standing as mediators between parties, yielding and leaning to the popular voice, but resisting it with the authority of their office, when it was manifestly in error.

It must be supposed that had the system proposed by the Earl of Durham been long since adopted, the popular will would have prevailed to a far greater extent than heretofore, and yet most of the practical evils found in the colonies have arisen from measures popular at the time of their enactment.

The preservation of the French language, laws, and institutions, and the consequent perpetuation of the contest between the races, so strongly deprecated by the Earl of Durham, was a popular measure, and must have prevailed even more injuriously, and even destructively, under a responsible government.

The concessions of public lands to U. E. Loyalists and their children, to militia, and other grantees not resident upon the lands, which now form an acknowledged public grievance, were popular measures: the persons who benefited by them being the population of the country, and those who complain of them not being yet arrived.

The parliamentary grants for local works, and the disposal of funds by commissioners named by the legislature, and the abuse of this patronage are evidently founded upon, and rising out of, the parliamentary influence sought to be made supreme, and are evils which might have been greatly exaggerated, but could not have been lessened by responsible Government. In fact they prove that governors should oftener take the responsibility of resisting the popular voice than they have been hitherto accustomed.

The very change in political sentiments, produced by the constant introduction of new population from Great Britain, shows that legislation in these colonies ought to be conducted with some view to the interests of those not represented in the legislature, but who may soon form the great mass of the subjects of the Crown in America. A responsible cabinet must, however, look exclusively to the party of the day, and in its favour neglect the great future interests of the Province.

In short, local and sectional interests are felt too strongly and directly in elective bodies, in small communities, to permit of consistent legislation on general principles, and the objects to be gained during the short period for which the majority hold their influence, are of too much consequence, compared with distinct general results, to permit of the perfectly unchecked course which would result from responsible government.

Although the points are few in which it is the interest of England directly to interfere with local and internal affairs in the colonies, your Committee are at a loss to conceive how, in a government so independent as this is proposed to be made of England, these few points can by any means be excluded from the control of the local parliament—a disagreement with the cabinet and legislature on the subject of foreign trade, immigration, disposal of lands, or any of the exlcuded topics, will just as readily induce a stoppage of the supplies, with all the consequences, as any of the questions within the range of local legislation, and if we can suppose cases in which the interests of the empire and that of the colony should be different, it is vain to expect that any set of public servants who should espouse the general interests could continue in authority.

Even in the question of peace and war, excluded alike from local legislation in the several states of America, as in the colonies, we have seen how nearly in the states of Michigan, New York, and Maine, the prevalence of popular opinion produced a terrible national war: how the arm of government was paralysed, and the licentious and outrageous conduct of the populace encouraged by local authorities, because of the influence of this excluded and forbidden question upon the elections of local governors and local legislatures:—and it cannot be

questioned that little more exacerbation of the public mind in Upper Canada, would have caused such a desire for reprisal and retaliation, as would have placed any local responsible cabinet, desirous to maintain peace on the border, in direct collision with the popular voice.

A stronger instance of the necessity for interference in local affairs than the recommendation of the British Government for a merciful course towards the prisoners presented, could scarcely have occurred, for it has justly been observed, that the honour of England would suffer, if life were taken unnecessarily. But to prevent its being taken to a much greater extent than has been permitted, required much firmness in the advisers of the government, and much reliance on their part on the Imperial authorities for support in the humane course recommended by them.

To conclude this subject, your Committee would observe, that so long as England holds sway in the colonies, there will be a majority seeking for power in the Provinces; and a minority for justice and protection, and impartial government. The moment the provincial magnates are made supreme by the proposed system, interference to do justice will be a breach of faith; and let it be recollected, that if England refuse the umpirage between contending parties, there is a power at hand, ready and anxious to join with either, and watching for the favourable opportunity.

From these reasonings, it appears evident, that the expenses of military defence in Canada are not to be avoided by a partial independence, or by anything short of abandonment. These expenses have not been incurred in consequence of any want of popular concessions: they have been caused by the unprincipled and outrageous conduct of the border Americans, which can only be held in check by military defences, or by the influence of British power, upon the American people, through their government.

Referring to the causes of the late insurrection, your Committee would observe, that it is not to be contended, that the influence over the public mind, caused by Sir Francis Head having placed the question at issue in such a light as to show political evils arising from the reform system so strongly as to produce the change in the elections of 1836, could either produce or excuse rebellion. The question at issue involved consequences of vital importance: nor could the rebellion be produced or excused by comparisons made by the public, to the disadvantage of the Reformers. The only pretence amongst all those urged, having any colour of argument, is the alleged corruption at the elections, and the influence then obtained by government. But this pretext seems, upon examination, as unfounded as the others: a people who will permit themselves, in a country in which the elective franchise is so widely diffused, to be bribed or influenced into returning an overwhelming majority to parliament, are not the most likely, therefore, to rise in rebellion against their own decision; and as to the fact of corruption on the part of the government, so far from there being any means of attempting such a course, it is with great difficulty that the government can find the means of carrying on itself, without any such expensive interference with the rights of electors. If the assertion were not too absurd for dispute upon it, reference might be had to the returns from the public offices, and to the proceedings in the Assembly, in which the reformers were invited, in vain, to sustain any one of these accusations, as a full refutation of the charge of corrupt interference influencing the elections.

That dissatisfaction prevailed amongst the defeated party, as in all other cases, is admitted—and that the elected members did not possess the confidence of those who voted against them, was to be expected; but that the successful majority were thereby driven into despair of good government, or were discontented with their own mode of putting members of their own choice into power, is not only contradicted by the argument that the remedy would always be in their own hands, but by the fact of the enthusiastic loyalty with which the populace of the country, chiefly those who formed the majority in the late elections, rallied round the very men and the governor, by whom, according to the complaint of the reformers, they had been disappointed and betrayed. Your Committee are of opinion, that the proximity of the American frontier—the wild and chimerical notions of civil government broached and discussed there—the introduction of a very great number of border Americans into this Province as settlers who, with some most respectable and worthy exceptions, formed the bulk of the reformers, who carried these opinions so far as disaffection—together

with the existence of actual rebellion, and the expectation of a general rising in Lower Canada, emboldened a portion of the minority to rise in rebellion in this Province, in the hope of achieving the overthrow of the Government with foreign assistance.

Is it because reformers, or a portion of them, can command the sympathies of the United States, and of Lower Canadian rebels, that the internal affairs of a British colony must be conducted so as to please them? Where would the colonial government have looked for support and defence, in its time of real danger, had proscription, and discouragement, and disregard, been the portion of those who had shown, at the elections, that they were willing to sacrifice a portion of popular influence, to the great object of retaining British connection?

How painfully must such men be excited, at reading, in Lord Durham's Report, what appears to be a justification of the course taken by the disaffected, without one word of approval of those who risked and endured so much in defence of British supremacy. In what manner, we ask, did the dominant party make use of the occasion, to persecute or disable the whole body of their political opponents? Who were the numbers of perfectly innocent men thrown into prison, and who suffered in person, property, and character? And what severe laws were passed in *Upper Canada*, under colour of which individuals very generally esteemed, were punished without any form of trial?

That some unauthorized individuals were prone to insult those whom they viewed, at the moment, as a fallen enemy, must have been the case. That the individuals, thus insulted, may have felt themselves aggrieved and annoyed, cannot be doubted—that a great many were thrown into prison (against whom the clearest proof of high treason was in the hands of the magistracy), but who were released without trial, a mercy which they most thankfully accepted, can easily be proved. That they were perfectly innocent, could only have been placed beyond dispute by a trial, but in the cases of the great number of individuals arrested, there were not only good grounds of suspicion, but means of proof of guilt, and it would be far, indeed, from being the interests of the parties themselves to provoke an inquiry.

It is true, that magistrates, sometimes looking to the circumstances of their own immediate neighbourhoods, rather than to the policy of the Government at large, proceeded with more zeal and strictness than the case demanded; but what good reason for complaint has the criminal, arrested for high treason, in the discovery, that the magistrate, by whose authority he is arrested, has a political leaning different from himself?

It is stated, in Lord Durham's Report, that it was generally believed, that the pardon of Samuel Lount, and Peter Matthews,[1] was solicited by no less than thirty thousand of their countrymen. The number of petitioners—men and women—who petitioned for these criminals, appear, upon examination, to be four thousand, five hundred, and seventy-four; such exaggerations necessarily refute themselves.

It is one of the most distressing effects of the publication of the Earl of Durham's Report, that His Lordship thus seems to condemn the execution of these men. If they really ought to have been spared, the publication of such a sentiment, from one in high authority, cannot restore them, but it must give rise to feelings, on the part of their friends, and their political party (who may never have imagined such a possibility as the escape from punishment of every one of the leaders of a rebellion, which inflicted so much calamity upon the Province), but who will now think that, had the Earl of Durham been in this Province, high treason would have been considered much in the same light as a riot at an election.

Your Committee having animadverted on the principal topics in the report of the High Commissioner, beg, ere they conclude, to observe that, as regards Upper Canada, Lord Durham could not possibly have any personal knowledge, the period of his sojourn in that Province being of such very short duration. Your Committee regret that His Lordship should have confided the task of collecting information to a person, who, be he whom he may, has evidently entered on his task, with the desire to exalt the opponents of the colonial government in the estimation of the High Commissioner, and to throw discredit on the statements of the supporters of British influence, and British connection—that

[1] Samuel Lount and Peter Mathews took an active part in the Mackenzie rebellion. They were executed in April 1838.

he should, in such an attempt have laid himself open to severe censure, was to be expected. Your Committee have, however, through a feeling of respect for Her Majesty's Commissioner, refrained from commenting on his Report, in the terms which they honestly avow they think it merits, confident that their forbearance will meet the desires of your Honourable House, and be equally in accordance with the wishes of the family compact hereinbefore mentioned.

All which is repectfully submitted.

J. S. Macaulay,
*Chairman.*

Committee Room,
Legislative Council
11*th day of May*, 1839.

## CV

## LORD JOHN RUSSELL ON CANADIAN AFFAIRS, JUNE, 1839 [1]

[Trans.: Chisholm, J. A., *The Speeches and Public Letters of Joseph Howe* (2 vols., Halifax, 1909).]

There is another question upon which I am now going to state an opinion, which question, I think, is of the very greatest importance and upon which Lord Durham has expressed an opinion contrary to that entertained by this House—I mean the question with respect to the responsibility of the individual holding the office of Governor in the Province. Lord Durham has stated that an analogy existed between the representative of the Crown in the Colony and the constitutional responsiblity of the ministers in this country. He states that as soon as the ministers of the Crown have lost the confidence of the House of Commons in this country they cease to be ministers, and that they could not go on with the government with a constant minority. He added that it is certainly a most unusual case for a ministry to go on for several months in a minority, and he then attempts to apply that principle to the government of Canada. Now, the resolution of this House on this subject was in these terms: "*Resolved*, That while it is expedient to improve the composition of the Executive Council of Lower Canada, it is unadvisable to subject it to the responsibility demanded by the House of Assembly of that Province." [2] This House upon my motion came to that resolution, and I must own that there is nothing in this report which has at all, in my mind, shaken the argument by which at the time I supported that resolution. It does not appear to me that you can subject the Executive Council of Canada to the responsibility which is fairly demanded of the ministers of the executive power in this country. In the first place, there is an obvious difference in matter of form with regard to the instructions under which the Governor of a colony acts. The Sovereign in this country receives the advice of the ministers and acts by the advice of those ministers, and indeed, there is no important act of the Crown for which there is not some individual minister responsible. There responsibility begins and there it ends. But the Governor of Canada is acting, not in that high and unassailable position in which the Sovereign of this country is placed. He is a Governor receiving instructions from the Crown on the responsibility of a Secretary of State. Here, then, at once, is an obvious and complete difference between the Executive of this country and the Executive of a colony. The Governor might ask the Executive Council to propose a certain measure. They might say that they could not propose it unless the members of the House of Assembly would adopt it, but the Governor might reply that he had received instructions from home commanding him to propose that measure. How, in that case, is he to proceed? Either one power or the other must be set aside,—either the Governor or the House of Assembly; or else the Governor must become a mere cipher in the hands of the Assembly and not attempt to carry into effect the measure which he is commanded by the home Government to do. But if we endeavour to carry out this analogy, there is one case that all the world allows is a case in which it could be applied—I mean the case of

[1] This speech was delivered on the introduction of the act of union, June 3, 1839. It led to the famous open letters addressed to lord John Russell (see Nos. CVI–CIX).

[2] See No. XCIII.

foreign affairs. If the Assembly of New Brunswick in the late collision carried on a dispute with the North American States—(Here some interruption occurred which gave rise to cries of "Order, Order.") The subject (continued the noble Lord) is certainly a very important one, and although I may express myself in very inadequate terms yet I do conceive that it is in my opinion one of the most important points contained in Lord Durham's report and one on which I differ with him. I ought to state the grounds of that difference. I say if the Assembly of New Brunswick had been disposed to carry the point in dispute with the North American States hostilely and the Executive Council had been disposed to aid them, in my opinion the Governor must have said that his duty to the Crown of this country and the general instructions which he had received from the minister of the Crown, did not permit him to take that course, and, therefore, he could not agree with the Executive Council to carry into effect the wish of the majority of the Assembly. That is allowed. Does not then this very exception destroy the analogy you wish to draw, when upon so important a point as that of foreign affairs, it cannot be sustained? Again neither could this analogy be maintained with regard to trade between Canada and the mother country or Canada and any other foreign country; how then can you adopt a principle from which such large exceptions are to be made? If you were to do so you would be continually on the borders of dispute and conflict; the Assembly and the Executive on the one hand requiring a certain course to be pursued, while the Governor on the other hand would be as constantly declaring that it was a course he could not adopt; so that instead of furnishing matter of content and harmony in these Provinces, you would be affording new matter for dispute and discontent, if you were to act upon this supposed analogy. But supposing you could lay down this broad principle and say that all external matters should be subject to the home Government and all internal affairs should be governed according to the majority of the Assembly, could you carry that principle into effect? I say we cannot abandon the responsibility which is cast upon us as ministers of this great empire. I will put a case, one merely of internal concern, that occurred only the other day. Let us suppose that an officer of Militia in Upper Canada after an action, was to order that the persons taken in that action should be put to death on the field. I can conceive it possible, in a state of exasperation and conflict with the people of a neighbouring state, that the Assembly might applaud that conduct and might require that it should be the rule, and not the exception, that all invaders of their territory should be treated in that manner and that the parties should be put to death without trial. Supposing that to be the case, could the Government of this country adopt such a rule? Could the Secretary of State for the Colonies sanction such a rule, and not decide, as his honourable friend the Under Secretary had done, that such a practise would meet with his decided reprehension? It is quite impossible to allow it to be laid down as a general principle that any part of the government of this country, conducted by ministers having the sanction of this House shall be overruled by a colony, and that such colony shall not be subject to the general superintending authority of the Crown of these realms. I can conceive, sir, and I think that it would be the part of wisdom and justice to say, that there are matters affecting the internal affairs of these Provinces,—that there are matters in which neither the Imperial Parliament nor the general Government need interfere and on which they should be anxious to consult the feelings of the people of the colonies. It seems to me, sir, as much a rule of sense as of generosity, that there are some questions on which it would not be desirable that, on the opinion of the Secretary of State for the Colonies, the opinion of the House of Assembly should be put on one side. I know no reason why the Legislative Assembly, whether of each separately, or of both Provinces united, should not be listened to with deference; but I am not prepared to lay down as a principle—a new principle—for the future government of the colonies, that we ought to subject the Executive there to the same restrictions as prevail in this country.

*Resolved*, That it is the opinion of this House that it is expedient to form a legislative union of the Provinces of Upper and Lower Canada, on the principles of a free and representative government, in such manner as may most conduce to prosperity and contentment of the people of the united Province.

*Resolved*, That it is expedient to continue till 1842 the powers vested in the Governor and special Council of Lower Canada by an Act of last session, with such alterations of those powers as may be deemed advisable.

## CVI

## JOSEPH HOWE'S LETTERS TO LORD JOHN RUSSELL [1]

[Trans.: Chisholm, *op. cit.*]

Halifax, Nova Scotia [*Sept.* 18, 1839].

My Lord,—I beg your Lordship to believe that no desire to seek for notoriety beyond the limited sphere in which Providence has placed me, tempts me to address these letters to you. Born in a small and distant Province of the empire, and contented with the range of occupation that it affords, and with the moderate degree of influence which the confidence of some portion of its population confers, I should never have thought of intruding upon your Lordship, had not the occupations of my past life, and the devotion to them of many days of toil and nights of anxious inquiry led me to entertain strong opinions upon a subject which your Lordship has undertaken recently to discuss; and which, while it deeply concerns the honour and the interests of the empire, appears to be, by Her Majesty's present ministers, but little understood. Whether or not the Anglo-Saxon population, upholding the British flag on this side of the Atlantic, shall possess the right to influence, through their representatives, the Government under which they live, in all matters touching their internal affairs (of which their fellow-subjects living elsewhere know nothing and with which they have no right to interfere) is a question, my Lord, that involves their happiness and freedom. To every Nova Scotian it is no light matter that the country of his birth, in whose bosom the bones of a hardy and loyal ancestry repose, and whose surface is possessed by a population inferior in none of the physical, moral, or mental attributes which distinguish his race, to any branch of the great British family, should be free and happy. I share with my countrymen their solicitude on this subject; I and my children will share their deep disgrace, if the doctrines recently attributed to your Lordship are to prevail to the utter exclusion of us all from the blessings and advantages of responsible government, based upon the principles of that Constitution which your Lordship's forefathers laboured to establish and ours have taught us to revere. To the consciousness of social and political degradation which must be my portion, if the future government of North America is arranged upon the principles recently avowed by the ministry, I am reluctant that the reflection should be added that the colonists were themselves to blame in permitting a great question, without ample discussion and remonstrance, to be decided upon grounds which they knew to be untenable and untrue. In addressing your Lordship on such a topic, it is gratifying to reflect that your past life is a guarantee that the moment that you are satisfied that a greater amount of freedom and happiness can be conferred on any portion of your fellow-subjects than they now enjoy, without endangering the welfare of the whole—when once convinced that the great principles of the British Constitution can be more widely extended, without peril to the integrity of the empire—you will not hesitate to lend the influence of your great name and distinguished talents to the good old cause "for which Hampden died in the field and Sidney on the scaffold."

Lord Durham's Report on the affairs of British North America appears to have produced much excitement in England. The position which his Lordship occupies as a politician at home naturally draws attention to whatever he says and does; and the disclosures made in the Report must appear so strange to many and the remedies suggested so bold and original to many more, that I am not surprised at the notice bestowed by friends and foes on this very important document. From what I have seen, however, it is evident that his Lordship is paying the penalty of party connection; and that his opinions on Canadian affairs, instead of being tried on their merits, are in many cases applauded or opposed, as his views of British or Irish politics happen to be relished or condemned. It is almost too much to expect that my feeble voice will be heard amidst the storm of praise and censure that this Report has raised; and yet there may be some, who, disliking this mode of estimating a state paper, or distrusting the means of judging possessed by many who express opinions, but whose

[1] For constitutional developments in the maritime provinces, see Martin, C., *Empire and Commonwealth* (Oxford, 1929).

practical experience of the working of colonial constitutions has been but slight—if indeed they have had any—may feel disposed to ask, What is the thought of the Report in the colonies? Are its leading features recognized as true to nature and experience there? Are the remedies suggested approved by the people whose future destinies they are to influence and control?

The Report has circulated for some months in the colonies, and I feel it a duty to state the grounds of my belief that his Lordship in attributing many if not all of our colonial evils and disputes to the absence of responsibility in our rulers to those whom they are called to govern, is entirely warranted by the knowledge of every intelligent colonist; that the remedy pointed out, while it possesses the merits of being extremely simple and eminently British,—making them so responsible, is the only cure for those evils short of arrant quackery; the only secure foundation upon which the power of the Crown can be established on this continent, so as to defy internal machination and foreign assault.

It appears to me that a very absurd opinion has long prevailed among many worthy people, on both sides of the Atlantic, that the selection of an Executive Council, who, upon most points of domestic policy, will differ from the great body of the inhabitants and the majority of their representatives, is indispensable to the very existence of colonial constitutions; and that if it were otherwise, the colony would fly off, by the operation of some latent principle of mischief, which I have never seen very clearly defined. By those who entertain this view, it is assumed, that Great Britain is indebted for the preservation of her colonies, not to the natural affection of their inhabitants—to their pride in her history, to their participation in the benefit of her warlike, scientific or literary achievements,—but to the disinterested patriotism of a dozen or two persons, whose names are scarcely known in England, except by the clerks in Downing Street; who are remarkable for nothing above their neighbours in the colony, except perhaps the enjoyment of offices too richly endowed; or their zealous efforts to annoy, by the distribution of patronage and the management of public affairs, the great body of inhabitants, whose sentiments they cannot change.

I have ever held, my Lord, and still hold to the belief, that the population of British North America are sincerely attached to the parent State; that they are proud of their origin, deeply interested in the integrity of the empire and not anxious for the establishment of any other form of government here than that which you enjoy at home; which, while it has stood the test of ages and purified itself by successive peaceful revolutions, has so developed the intellectual, moral, and natural resources of two small Islands, as to enable a people, once comparatively far behind their neighbours in influence and improvement, to combine and wield the energies of a dominion more vast in extent and complicated in all its relations than any other in ancient or modern times. Why should we desire a severance of old ties that are more honourable than any new ones we can form? Why should we covet institutions more perfect than those which have worked so well and produced such admirable results? Until it can be shown that there are forms of government, combining stronger executive power with more of individual liberty; offering nobler incitements to honourable ambition, and more security to unaspiring ease and humble industry; why should it be taken for granted, either by our friends in England, or our enemies elsewhere, that we are panting for new experiments; or are disposed to repudiate and cast aside the principles of that excellent Constitution, cemented by the blood and the long experience of our fathers and upon which the vigorous energies of our brethren, driven to apply new principles to a field of boundless resources, have failed to improve? This suspicion is a libel upon the colonist and upon the Constitution he claims as his inheritance; and the principles of which he believes to be as applicable to all the exigencies of the country where he resides, as they have proved to be to those of the fortunate Islands in which they were first developed.

If the conviction of this fact were at once acknowledged by the intelligent and influential men of all parties in Britain, colonial misrule would speedily end and the reign of order indeed commence. This is not a party question. I can readily understand how the Duke of Wellington and Sir Robert Peel may differ from your Lordship or the Earl of Durham as to whether measures should be carried, which they believe would impair, and you feel will renovate, the Constitution; but surely none of these distinguished men would wish to deny the Constitution itself to large bodies of British subjects on this side of the water, who have not

got it, who are anxious to secure its advantages to themselves and their children; who, while they have no ulterior designs that can by any possibility make the concession dangerous, can never be expected to be contented with a system the very reverse of that they admire; and in view of the proud satisfaction with which, amidst all their manly struggles for power, their brethren at home survey the simple machinery of a government, which we believe to be, like the unerring principles of science, as applicable to one side of the Atlantic as to the other, but which we are nevertheless denied.

Many persons, not familiar with the facts, may wonder how this occurs, and may be disposed to doubt the correctness of my assertion. It seems strange that those who live within the British Empire should be governed by other principles than those of the British Constitution; and yet it is true, notwithstanding. Let me illustrate the fact, by a few references to British and Colonial affairs. In England the government is invariably trusted to men whose principles and policy the mass of those who possess the elective franchise approve and who are sustained by a majority in the House of Commons. The Sovereign may be personally hostile to them; a majority of the House of Lords may oppose them in that august assembly; and yet they govern the country until, from a deficiency of talent, or conduct, or from ill fortune, they find their representative majority diminished, and some rival combination of able and influential men in condition to displace them. If satisfied that the Commons truly reflect the opinions of the constituency, they resign; if there is any doubt, a dissolution is tried, and the verdict of the country decides to which party its destinies are to be confided. You, in common with every Englishman living at home, are so familiar with the operation of this system, and so engrossed with a participation in the ardent intellectual competition it occasions, that perhaps you seldom pause to admire what attracts as little attention as the air you breathe. The cabman who drives past St. Paul's a dozen times a day, seldom gazes at its ample outline or excellent proportions; and yet they impress the colonist with awe and wonder and make him regret that he has left no such edifice in the west.

As a politician, then, your Lordship's only care is, to place or retain your party in the ascendant in the House of Commons. You never doubt for an instant that if they are so, they must influence the policy and dispense the patronage of the Government. This simple and admirable principle of letting the majority govern, you carry out in all your corporations, clubs, and public companies and associations; and no more suspect that there is danger in it or that the minority are injured when compelled to submit, than you see injustice in awarding a cup at Epsom or Doncaster to the horse that has won rather than to the animal which has lost the race. The effects of this system are perceptible everywhere. A peer of France, under the old régime, if he lost the smiles of the court suffered a sort of political and social annihilation. A peer of England, if unjustly slighted by the Sovereign, retires to his estate, not to mourn over an irreparable stroke of fortune, but to devote his hours to study, to rally his friends, to connect himself with some great interest in the state, whose accumulating strength may bear him into the counsels of his Sovereign, without any sacrifice of principles or diminution of self-respect. A commoner feels, in England, not as commoners used to feel in France, that honours and influence are only to be obtained by an utter prostration of spirit, the foulest adulation, the most utter subserviency to boundless prerogatives, arbitrarily exercised,—but that they are to be won in open arenas, by the exercise of those manly qualities which command respect; and by the exhibition of the ripened fruits of assiduous intellectual cultivation, in the presence of an admiring nation, whose decision ensures success. Hence there is a self-poised and vigorous independence in the Briton's character by which he strangely contrasts with all his European neighbours. His descendants in the colonies, notwithstanding the difficulties of their position, still bear to John Bull, in this respect, a strong resemblance; but it must fade if the system be not changed; and our children, instead of exhibiting the bold front and manly bearing of the Briton, must be stamped with the lineaments of low cunning and sneaking servility, which the practical operation of colonial government has a direct tendency to engender.

From some close observation of what has occurred in Nova Scotia and in the adjoining colonies, I am justified in the assertion, that the English rule is completely reversed on this side of the Atlantic. Admitting that in Lower Canada, in consequence of the state of society which Lord Durham has so well depicted,

such a policy may have been necessary; surely there is no reason why the people of Upper Canada, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, should, on that account, be deprived of the application of a principle which is the corner-stone of the British Constitution—the fruitful source of responsibility in the Government, and of honourable characteristics in the people. If the Frenchmen in one Province do not understand, or cannot be entrusted with this valuable privilege, why should we, who are all British or of British descent, be deprived of what we do understand and feel that we can never be prosperous and happy without?

Your Lordship asks me for proofs. They shall be given.

Looking at all the British North American Colonies, with one single exception, so far as my memory extends, although it has sometimes happened that the local administration has secured a majority in the Lower House, I never knew an instance in which a hostile majority could displace an Executive Council, whose measures it disapproved; or could, in fact, change the policy or exercise the slightest influence upon the administrative operations of the Government. The case which forms the exception was that of the Province of New Brunswick; but there the struggle lasted as long as the Trojan war—through the existence of several Houses of Assembly; and was at length concluded by an arrangement with the authorities at home after repeated appeals and two tedious and costly delegations to England. But the remedy applied, even in that case, though satisfactory for the time, can have no application to future difficulties or differences of opinion. Let us suppose that a general election takes place in that Province next year and that the great body of the people are dissatisfied with the mode in which the patronage of the Government has been distributed and the general bearing of the internal policy of its rulers. If that colony were an English incorporated town, the people would have the remedy in their own hands; if they were entrusted with the power which as British subjects of right belongs to them, they would only have to return a majority of their own way of thinking; a few men would change places; the wishes of the majority would be carried out, and by no possibility could anything occur to bring the people and their rulers into such a state of collison as was exhibited in that fine Province for a long series of years. But under the existing system, if a hostile majority is returned what can they do? Squabble and contend with an executive whom they cannot influence; see the patronage and favour of Government lavished upon a minority who annoy, but never outvote them; and, finally, at the expiration of a further period of ten years, appeal by delegation to England; running the hazard of a reference to a clerk or a secretary whose knowledge of the various points at issue is extremely limited—who has no interest in them, and who, however favourably disposed, may be displaced by some change in the position of the parties at home before the negotiations are brought to a close.

In 1836, a general election took place in Nova Scotia; and when the Legislature met for the despatch of business, it was found that the local government had two-thirds of the members of the representative branch against them. A fair-minded Englishman would naturally conclude that the local cabinet, by a few official changes and a modification of its policy, would have at once deferred to the views and opinions of so large a majority of the popular branch. Did it do so? No. After a fierce struggle with the local authorities, in which the revenue bills and the appropriations for the year were nearly lost, the House forwarded a strong address to the foot of the throne, appealing to the Crown for the redress of inveterate grievances, the very existence of which our colonial rulers denied, or which they refused to remove.

To give your Lordship an idea of the absurd anomalies and ridiculous wretchedness of our system up to that time, it is only necessary to state, that a Council of twelve persons administered the government, and at the same time formed the upper branch of the Legislature, sitting invariably with closed doors. Only five of these twelve gentlemen were partners in one private bank, five of them were relations, two of them were heads of departments, and one was the Chief Justice, who in one capacity had to administer the law he had assisted to make, and then in a third to advise the Governor as to its execution. To heighten the absurdity of the whole affair, it is hardly necessary to add, that only nine of these twelve men were members of a particular Church, which, however useful or respectable, only embraced one-fifth of the whole population of the Province. To the passage of certain measures for the regulation of our currency, the

derangement of which was supposed to be profitable to those who dealt in money, the bankers were said to have opposed their influence. Any attempt at reduction of the expense of the revenue departments, the heads of which sat at the board, was not likely to prevail; while the patronage of the Government was of course distributed by the nine Churchmen, in a way not very satisfactory to the four-fifths of the people who did not happen to belong to that communion. Such a combination as this never could have grown up in any colony where the English principle of responsibility had been in operation. Indeed, there was something so abhorrent to British feeling and justice in the whole affair that Lord Glenelg at once decided that it was "too bad"; and, while in Her Majesty's name he thanked the Commons for the representation they had made, he directed the Governor to dissolve the old Council and form two new ones free from the objections which the Assembly had urged.

Had the instructions given been fairly carried out, there is little doubt that in Nova Scotia, as in New Brunswick, the people and their representatives would have been contented for a time; and would have felt that, in extreme cases, an appeal from their local rulers to the Colonial Secretary would be effectual. The existing machinery of government might have been supposed to be adequate to the necessities of the country, with perhaps an entire revision and repair at the hands of the master workmen at home once in ten years, or whenever the blunders of subordinates in the colony had completely clogged its operations.

But mark the result. The Governor was instructed to call into the new Councils those who "possess the confidence of the country." Now, you in England are simple enough to believe, that when the Whigs have, in a house of six hundred and sixty-eight members, a majority of eight or ten, they possess the confidence of the country; and if their majority should happen to be double that number, you would think it droll enough if they were excluded from political influence, and if the new creations of peers and selections for the Cabinet should all be made from the ranks of their opponents. This would be absurd at home, and yet it is the height of wisdom in the colonies. At the time these commands were sent out, the party who were pressing certain economical and other reforms in Nova Scotia were represented by two-thirds of the members of the popular branch. The relative numbers have occasionally varied during the past three sessions. At times, as on the recent division upon a delegation, the reformers have numbered thirty-three to eleven, in a House of forty-six. On some questions the minority has been larger, but two thirds of the whole may be fairly taken as the numerical superiority on all political questions of the reformers over their opponents. It will scarcely be believed, then, in England, that in the new appointments, by which a more popular character was to be given to the Councils, six gentlemen were taken from the minority and but two from the ranks of the majority. So that those who had been thanked for making representations to the Queen and who were pressing for a change of policy, were all passed over but two; while those who had resisted and opposed every representation, were honoured by appointments and placed in situations to render any such change utterly hopeless. The Executive Council, the local cabinet or ministry, therefore, contained one or two persons of moderate views, not selected from the House; one from the majority; and eight or ten others, to render his voice very like that of the "man crying in the wilderness." He held his seat about half a year and then resigned; feeling that while he was sworn to secrecy and compromised by the policy he had not approved he had no influence on the deliberations of the Cabinet or the distribution of patronage. Things were managed just as much in accordance with the royal instructions with respect to the Legislative Council. The pack was shuffled, the game was to remain the same. The members of the majority, as I have said before, were all omitted in the new creation of peers, but one; while from the House and beyond it some of the most determined supporters of old abuses were selected; and among them, a young lawyer who had shown a most chivalrous desire to oppose everything Her Majesty so graciously approved; and who, in the excess of his ultra zeal, had, upon the final passage of the address to the Crown, when almost all his friends deserted him, voted against the measure in a minority of four.

Here, then, your Lordship has a practical illustration of the correctness of Lord Durham's observations, and may judge of the chance the present system offers of good colonial government, even when the people have the Queen and the Colonial Secretary on their side. Such policy would wither all hope in the

Nova Scotians, if they did not confide in the good sense and justice of their brethren within the four seas. We do not believe that the Parliament, press, and the people of England, when rightly informed, will allow our local authorities "to play such tricks before high heaven" or force us to live under a system so absurd, so anti-British, so destructive of every manly and honourable principle of action in political affairs. The House of Assembly, as a last resort, after ample deliberation, determined to send two members of that body as delegates to England, to claim the rights of Englishmen for the people of this country. Your Lordship's declaration tells me, that on this point they will be unsuccessful; but patient perseverence is a political characteristic of the stock from which we spring.

You ask me for the remedy. Lord Durham has stated it distinctly: the Colonial Governors must be commanded to govern by the aid of those who possess the confidence of the people, and are supported by a majority of the representative branch. Where is the danger? Of what consequence is it to the people of England, whether half-a-dozen persons, in whom that majority have confidence, but of whom they know nothing and care less, manage our local affairs; or the same number, selected from the minority, and whose policy the bulk of the population distrust? Suppose there was at this moment a majority in our Executive Council who think with the Assembly, what effect would it have upon the funds? Would the stocks fall? Would England be weaker, less prosperous or less respected, because the people of Nova Scotia were satisfied and happy?

But, it is said, a colony being part of a great empire must be governed by different principles from the metropolitan state. That, unless it be handed over to the minority it cannot be governed at all; that the majority, when they have things their own way, will be discontented and disloyal; that the very fact of their having nothing to complain of will make them desire to break the political compact, and disturb the peace of the empire. Let us fancy that this reasoning were applied to Glasgow, or Aberdeen, or to any other town in Britain, which you allow to govern itself. And what else is a Province, like Nova Scotia, than a small community, too feeble to interfere with the general commercial and military arrangements of the Government; but deeply interested in a number of minor matters, which only the people to be affected by them can wisely manage; which the ministry can never find leisure to attend to, and involve in inextricable confusion when they meddle with them? You allow a million of people to govern themselves in the very capital of the kingdom; and yet Her Majesty lives in the midst of them without any apprehension of danger, and feels the more secure, the more satisfaction and tranquillity they exhibit. Of course, if the Lord Mayor were to declare war upon France, or the Board of Aldermen were to resolve that the duties on brandy should no longer be collected by the general revenue officers of the kingdom, everybody would laugh, but no one would apprehend any great danger. Should we, if Lord Durham's principles be adopted, do anything equally outré, check us, for you have the power; but until we do, for your own sakes—for you are as much interested as we are—for the honour of the British name, too often tarnished by these squabbles, let us manage our own affairs, pay our own officers, and distribute a patronage, altogether beneath your notice, among those who command our esteem.

The Assembly of Nova Scotia asked, in 1837, for an elective Legislative Council, or for such other reconstruction of the local government as would ensure responsibility. After a struggle of three years we have not got either. The demand for an elective upper branch was made under the impression, that two Houses chosen by the people would sufficiently check an Executive exempt from all direct colonial accountability. From what has occurred in the Canadas; from the natural repugnance which the House of Peers may be supposed to entertain upon this point; from a strong desire to preserve in all our institutions the closest resemblance to those of our mother country, a responsible Executive Council, as recommended by Lord Durham, would be preferred. Into the practicability of his Lordship's plan of a union of all the colonies under one government, I do not intend to enter; that is a distinct question; and whenever it is formally propounded to the local Legislatures, will be gravely discussed upon its own merits; but whether there be union or not, the principle of responsibility to the popular branch must be introduced into all the colonies without delay. It is the only simple and safe remedy for an inveterate and very common disease. It is mere mockery to tell us that the Governor himself is responsible. He must

carry on the government by and with the few officials whom he finds in possession when he arrives. He may flutter and struggle in the net, as some well-meaning Governors have done, but he must at last resign himself to his fate; and like a snared bird be content with the narrow limits assigned him by his keepers. I have known a Governor bullied, sneered at, and almost shut out of society, while his obstinate resistance to the system created a suspicion that he might not become its victim; but I never knew one, who, even with the best intentions and the full concurrence and support of the representative branch, backed by the confidence of his Sovereign, was able to contend on anything like fair terms, with the small knot of functionaries who form the Councils, fill the offices, and wield the powers of the Government. The plain reason is, because, while the Governor is amenable to his Sovereign, and the members of Assembly are controlled by their constituents, these men are not responsible at all; and can always protect and sustain each other, whether assailed by the representatives of the Sovereign or the representatives of the people. It is indispensable, then, to the dignity, to the independence, to the usefulness of the Governor himself, that he should have the power to shake off this thraldom, as the Sovereign does if unfairly hampered by faction; and by an appeal to the people, adjust the balance of power. Give us this truly British privilege, and colonial grievances will soon become a scarce article in the English market.

The planets that encircle the sun, warmed by its heat and rejoicing in its effulgence, are moved and sustained, each in its bright but subordinate career, by the same laws as the sun itself. Why should this beautiful example be lost upon us? Why should we run counter to the whole stream of British experience; and seek, for no object worthy of the sacrifice, to govern on one side of the Atlantic by principles the very reverse of those found to work so admirably on the other. The employment of steamers will soon bring Halifax within a ten days' voyage of England. Nova Scotia will then not be more distant from London than the north of Scotland and the west of Ireland were a few years ago. No time should be lost, therefore, in giving us the rights and guards to which we are entitled; for depend upon it the nearer we approach the mother country, the more we shall admire its excellent constitution, and the more intense will be the sorrow and disgust with which we must turn to contemplate our own.

## CVII

## JOSEPH HOWE TO LORD JOHN RUSSELL

[Trans.: Chisholm, *op. cit.*]

My Lord,—I have read the speech delivered by your Lordship on the 3rd of June, as reported in *The Morning Chronicle*, several times; and beg your Lordship's attention to what I conceive to be the rational solution of the difficulties raised in that speech to the concession of the principle of local responsibility. Had your Lordship been more familiar with the practical workings of the existing colonial constitutions, and with the feelings of the people who smart under the mischiefs they produce, you would not, perhaps, have fallen into some errors by which that speech is disfigured; nor have argued the question as one in which, the obvious, manifold, and vital interests of the colonists were to be sacrificed to fear of some vague and indefinite injury that might be sustained by imperial interests, if executive power were taken from the ignorant and given to the well-informed—if it passed from the hands of officers to whom but a nominal responsibility can attach, into those of men subject to constant scrutiny, and, whenever they fail in their duty, liable to exposure and disgrace.

Lord Durham recommends that the English rule, by which those who conduct public affairs resign when they have lost the confidence of the Commons, should be applied to the Executive Councillors in North America. Your Lordship denies the existence of the analogies upon which Lord Durham's views are based:—

"It does not appear to me that you can subject the Executive Council of Canada to the responsibility which is fairly demanded of the ministers of the executive power in this country. In the first place, there is an obvious difference in matter of form with regard to the instructions under which the Governor of the colony acts. The Sovereign in this country receives the advice of the ministers, and acts by the advice of those ministers; and indeed there is no

important act of the Crown for which there is not some individual minister responsible. There responsibility begins, and there it ends. But the Governor of Canada is acting, not in that high and unassailable position in which the Sovereign of this country is placed. He is a Governor receiving instructions from the Crown on the responsibility of a Secretary of State. Here then, at once, is an obvious and complete difference between the executive of this country and the executive of a colony." [1]

Now, my Lord, let me beg your Lordship's attention to a few of the reasons why I conceive that such an argument as this ought not to stand in the way of the permanent peace, prosperity, and happiness of a million and a half of human beings. "The Sovereign in England receives the advice of the ministers and acts by the advice of those ministers;"—but are there no limits assigned by law, within which those advisers are bound to keep?—and is not the Sovereign bound to know and to apprise the country when they over-step them? What is the question at issue now between the Whigs and Tories? Is it not, whether, according to the spirit and practice of the Constitution, Sir Robert Peel had or had not a right to advise the changes in Her Majesty's household, upon which he insisted, before he would consent to form an administration? Suppose the present Cabinet were to advise Her Majesty to cut off Sir Robert's ears, or to bombard the city of London, would she obey, or would she not say, "Gentlemen you are exceeding your powers, and unless you conduct yourselves with more discretion, you must resign?" It is plain, therefore, that there are bounds beyond which even in the mother country, neither the advisers nor the monarch can pass; and none who seek colonial responsibility are so mad as to require that corresponding restrictions shall not be binding here; that there shall not be a limit beyond which no Executive Councillor can pass, and over which no representative of Her Majesty will consent to be driven? These bounds must be clearly defined in the Act of Parliament which establishes the new system, or in the instructions sent to the Governors, to be communicated to the Legislatures; and which they may, if they see fit, embody in a bill, which, so long as it exists, shall be, to all intents and purposes, the Constitution of the Colony.

But, your Lordship says:—"The Governor is acting, not in that high and unassailable position in which the Sovereign of this country is placed." Why should he not occupy a position nearly as independent; and be perfectly unassailable, so long as he does not interfere (as the Sovereign would not dare to do) with matters for which others are responsible; nor allow himself, or his Council, to overstep those boundaries which British subjects on both sides of the Atlantic, for the protection of their mutual rights and interests, have established; and for a jealous recognition of which he, in case bad advice be given him, is alone responsible? The Queen's position is unassailable only so long as she does no act which the Constitution does not permit to be done. The Governor, if assailed, would in like manner turn to the Constitution of the colony committed to his care; and show that on the one hand he had neither trenched upon the rights essential to the security of colonial liberty, nor, on the other, timorously yielded aught which the laws for the protection of imperial interests made it criminal to yield.

Your Lordship is mistaken, therefore, in supposing that the Sovereign is divested of all responsibility; although I admit it is much more difficult to call him or her to an account than it would be the Governor of a colony. If the Queen were to deprive Sir Robert Peel of his ears or open a few batteries upon London, an *émeute* or a revolution would be the only remedy; but a Governor, if he consented to an act which shut out British manufacturers, or was tempted to levy war upon a friendly state, could be called to account without difficulty or delay; and, hence, I argue, that the facility and certainty of inflicting punishment for offences of this sort would prevent their commission; and operate as a sufficient guard to the imperial interests, which your Lordship seems so anxious to protect. If it be said that the people in a colony may sustain councillors who give unconstitutional advice, my answer is, that the same thing may occur in England. When it does, a peaceful modification of the Constitution, or a revolution follows; but these cases are not so frequent as to excite alarm, nor is there any reason to believe that they will be more so in the colonies, whose power to enforce improper demands is so questionable.

"He is a Governor receiving instructions from the Crown, on the responsibility

[1] See No. CV.

of a Secretary of State." This passage suggests some reflections which I feel it my duty respectfully to press upon your Lordship's attention. One of the evils of the existing system, or rather haphazard mode of government, devoid of all system, is the various readings given to the medley of laws, usages, and Colonial Office despatches, by which we are at present ruled. An excellent illustration of the difficulty of obtaining an interpretation of these, about which there can be no mistake—which he who runs may read—may be furnished by contrasting the views put forth by your Lordship with those acted upon by Sir Francis Head;[1] and which, after a bloody rebellion, brought on to prove the value of his theory, he still avows in every succeeding edition of his *Narrative*, with a consistency and complacency worthy of all praise. "The responsibility," says your Lordship, "*rests on the Secretary of State.*" "The responsibility," says Sir Francis Head, in every act of his government and in every page of his book, "*rests on me.*" From the moment of his entering into Upper Canada, he threw overboard all the instructions from the Colonial Secretary (who according to your Lordship ought to have been obeyed, for he was alone responsible); he struck out a course of policy entirely new; commenced "putting the padlock on the mind," to be followed by some hundreds of handcuffs on the wrists, and padlocks on the body. His language to Lord Glenelg throughout was, "*You* must support *me*,"—"The fear is that *I* will not be supported at the Colonial Office." In fact, from first to last, Sir Francis gave instructions to, instead of receiving them from, the Secretary of State; and finding that Lord Glenelg would not permit him to try his experiments in government, and combat the fiery dragon of democracy in the bosom of a British Province, at the cost of a good deal of blood and treasure, and the prospects of a foreign war, without occasionally offering a little advice, the worthy Baronet resigned; and has ever since been publishing his complaints to the world and claiming its sympathy, as a sufferer for conscience' sake, in upholding the only correct reading of colonial constitutions, and which the Secretary of State, and the Whig Government of which he was a member, did not understand. The doctors in this case differed; and the patient was left prostrate, mangled, bleeding and exhausted, listening to their altercations, but suffering from every gash made to convince each other at her expense; and there she lay, until recently; when, beginning to suspect that both had been talking nonsense and trying absurd experiments, she lifted her languid head, stretched out her wounded limbs, and began to fix her eyes upon the only remedy by which health could be restored.

Let us, in order to convince ourselves that the conclusion to which Upper Canada is coming after all her sufferings is a sound one, examine the two prescriptions and modes of treatment; and ascertain whether either contains anything which ought to rescue it from the oblivion that invariably closes over the nostrums by which the science of politics, like the science of medicine, is often disfigured for a time.

A colony where the Governor is alone responsible is Sir Francis Head's interpretation of the system under which we live. It is one very much affected by colonial Governors everywhere. Unlimited power within a wide Province is a beautiful idea for an individual to indulge, especially when it is attended with but little risk and only nominal responsibility. Of all the British colonial Governors who have wielded this vast authority; plumed themselves upon the possession of these plenary powers; and, in the exercise of them, vexed, distracted, and excited to disaffection one Province after another, how many have been tried and punished? How many have met with even a reprimand from the ministry, or a cold look from the Sovereign whose authority they had abused? I leave your Lordship, whose historical reading has been much more extensive than mine, to point out the instances; I have searched for them in vain. It is true that debates in Parliament occasionally arise upon such subjects; but these, judging by their practical effect, can hardly be taken into account. A Governor knows well that, so long as he holds office, the ministry by whom he was appointed will defend him; that their majority in the Commons precludes the possibility of a vote of censure being passed against him; that the Duke, under whom he probably served, having a majority in the Upper House, he is perfectly safe, so long as he commits no act so flagrant as to outrage the feelings of the nation; and which, coming home to the heart of every man and woman in Eng-

[1] Head was lieutenant-governor of Upper Canada from January 1836 to March 1838. He published an account of his rule entitled *A Narrative* (3rd edn., London, 1839).

land, would make it unsafe for any parliamentary combination to attempt to protect him. Thus fenced in during his administration, what are his perils when he retires? The colonists, too happy when rid of the nuisance to be vindictive, and hoping better things from a successor, of whom they are unwilling to suspect any evil, cease to complain; his Excellency is removed to another Province, with a larger salary, to act the same farce over there; or retires to his estates in the mother country, to form one of that numerous body of ex-Governors who live upon the consciousness of having, once within their lives at least, wielded powers within a wide range and over the destinies of many thousands of their fellow-beings, such as are never permitted to be wielded by any individual, however high his rank or widely extended his influence, without full and ample responsibility, within the British Islands themselves. These men, whether they go into Parliament or not, always sympathize with Governors abroad acting upon their darling theory; and, as they are often consulted by ministers who know perhaps a little less than themselves, they are always at hand to stifle the complaints of the colonists when appeals are made to England.

Your Lordship will perceive, therefore, that when a Governor declares, as did Sir Francis Head, that the responsibility rests on him, he merely means that he is about to assume extensive powers, for three or four, perhaps for eight or ten years, without the shadow of a chance of his ever being called to account for anything he may do or leave undone. To enable you to form some idea of the peace, prosperity and satisfaction likely to be diffused over a Province, by a Governor acting upon these principles and exercising these powers, let me request your Lordship to imagine that, after twenty or thirty years of military service, by which I have become disciplined into a contempt for civil business and a fractious impatience of the opinions of all beneath me in rank, Her Majesty has the right, and graciously deigns to exercise it, of making me Mayor of Liverpool. Fancy that, up to the moment when the information is conveyed to me, though I have heard the name of that city several times and have some vague notion that Liverpool is a large commercial port in England; yet that I neither know on what river or on which side of the island it is situated, nor have the least knowledge of its extent, population, requirements or resources; the feelings, interests, prejudices or rights of its inhabitants. Within a month, having had barely sufficient time to trace out the situation of the place upon a map, read a book or two about it, hear an under-secretary talk an hour or two of what neither he nor I understand; receive a packet of instructions—of which half-a-dozen different readings may be given—and become thoroughly inflated with my own consequence, I find myself in Liverpool; and feel that I am the great pivot upon which all its civil administration, its order and defence, its external relations with the rest of the empire and the rest of the world turns: the fountain from which its internal patronage is to flow; and to which all, for a long period of years, must look for social and political ascendency, if they have no merit; and, if they have, for a fair consideration of their claims.

Your Lordship will readily believe, that a man thus whisked away from the pursuits which have occupied his thoughts for years and plunged into a new scene, surrounded by human beings not one of whose faces he ever saw before; called to the consideration of a thousand topics, with almost any one of which the assiduous devotion of half a life would be required to make him familiar; and having to watch over vast interests, balance conflicting claims, decide on the capacity of hundreds, of whose characters, talents and influence he is ignorant; to fill offices, of the duties of which he has not the slightest conception; —that a man so situated, must either be very vain or very able, if he is not appalled at the extent of the responsibility he has assumed; and must be an angel of light indeed, if he does not throw the good city of Liverpool into confusion. This, my Lord, is no fancy sketch; no picture, highly coloured to produce effect, but which on close examination, an artist would cast aside as out of drawing; it is a faithful representation of what occurs in some British colony almost every year.

But it may be said, all this is granted, and yet there is the Legislature to influence and instruct. Liverpool shall still serve for illustration, and we will presently see to what extent the representative branch operates on the conduct of a gentleman who assumes the responsibility and is placed in the circumstances described. Let us suppose that the city charter gives me for my advisers, from the moment I am sworn in, ten or a dozen individuals, some of them heads of

departments, enjoying large salaries and much patronage; others, perhaps, discarded members of the popular branch; and not a few selected by no rule which the people can clearly understand, but because they happened to flatter the vanity of one or other of my predecessors, or to be connected with the families, or favourable to the views or interests of some of those by whom they were advised. This body, be it observed, by usage never departed from, hold their situations as Councillors for life; the people have no control over them, neither have I; they are sworn not to inform upon each other, nor is it necessary that they should; because, as I have assumed the responsibility, and they for their own interest favour the theory, if anything goes wrong they can lay the blame on me. This body, then, which owes no allegiance to the people of Liverpool; which often, in fact, has an interest the very reverse of theirs; which, suspected of usurpation and improper influence, pays back the imputation with unmeasured contempt; and hardly one-fifth of whose number could, by any possibility, be thus honoured if their seats depended on popular slection; this body I am compelled to call around me in order that my administration may commence, for without some such assistance, I am unable to take a single step. They come; and there sit, at the first council board, the *responsible* Mayor, who knows nothing and nobody, and his *irresponsible* advisers, who, if they do not know everything—and they are seldom greater witches than their neighbours—know their friends, a lean minority of the citizens, from their enemies, the great majority; and are quite aware that, for their interest, it is necessary that I should be taught, as soon as possible, to despite the latter and throw myself into the arms of the former. Will any sensible man, calmly viewing the relative situations, opportunities and powers of the parties, believe that any act of administration done, or any appointment made for the first six months, is my act or my appointment? I may choose between any two or three persons whose names are artfully set before me, when an office is to be filled, and if determined to show my independence may choose the worst; but I must choose from the relatives and friends of my advisers, or from the small minority who support them in the hopes of preferment; for to that section the whole of the city patronage must be religiously confined; and it is of course so managed, that I scarcely know or have confidence in anybody else.

Can your Lordship believe that such a state of things would give satisfaction to the citizens? Would they not begin to grumble and complain, to warn, to remonstrate, and to expose the machinations and manoeuvres of the monopolists? It would be very odd, and they would be very strange Englishmen if they did not. But as I have come to Liverpool to demonstrate the beauties of this system of city government, which I highly approve; as I have assumed the whole responsibility and become inflated with the consciousness of my extensive powers; and, above all, as I am taught by my advisers to look upon every complaint of the *system* as a libel upon my judgment and an insult to my administration—I very soon begin to dislike those who complain; to speak and write contemptuously of them in private and in public; to denounce any who have the hardihood to suggest that some alterations are required, by which the opinions and rights of the majority shall be respected, as men dangerous to the peace of the city and disaffected towards Her Majesty's person and government; until, in fact, Liverpool becomes very like a town, in the olden time, in which the inhabitants generally being hostile to their rulers, the latter retire to the citadel, from which they project every sort of missile and give every species of annoyance.

By-and-by the time arrives for the legislative branches of the city government to assemble. One of these being elected at short periods, under a low franchise, which includes the greater body of the independent citizens, may be taken as a fair reflection of all their great interests, their varied knowledge, passions and prejudices; the other is a body of life legislators, selected by my advisers from among their own relatives and friends; with a few others, of a more independent character, to save appearances, but in which they always have a majority of faithful and determined partisans. The business commences; the great majority of members in the representative branch—speaking the matured opinions of the people—complain of the system and of the advisers it has placed around me; expressing the fullest confidence in me, whom they cannot suspect of wishing to do them harm, but asking my co-operation towards the introduction of changes without which, they assure me, the city never can prosper. But my advisers having a few of their adherents also in this body, they are instructed to declare

any change unnecessary; to throw every obstruction in the way; to bully and defame the most conspicuous of those who expose the evils of the existing system; and to denounce them all as a dangerous combination, who, with some covert design, are pressing, for factious objects, a series of frivolous complaints. Of course, as the minority speak the sentiments which I have imbibed and put themselves forward as my personal champions on all occasions, they rise in my esteem exactly in the same proportions as the other party are depressed, until they become special pets; and, from their ranks, as opportunities occur, all vacancies are supplied, either in the list of irresponsible advisers who in my name carry on the government, or in the number of life legislators, who do their bidding in the upper branch.

I respectfully beg your Lordship to ponder over these passages, which I assure you are true to nature and to experience; and ask yourself, after bringing home such a state of affairs to the bosom of any British city, how long it would be uncomplainingly endured? or how long any ministry, duly informed of the facts, would wish it to continue? Look back, my Lord, and you will find in every rotten corporation, swept away by the immortal act of which your Lordship was one of the ablest defenders, a resemblance to our colonial governments as they at present stand, too strong to be mistaken; and let me venture to hope, that the man who did not spare corruption so near the national centre of vitality, who did not hesitate to combat these hydra-headed minorities, who swarming over England, everywhere asserted their right to govern the majorities, will not shrink from applying his own principles—the great principles of the Constitution—to these more distant, but not less important portions of the empire.

Your Lordship will, perhaps, urge that Sir Francis Head succeeded in pleasing the people and getting the majority on his side. Admitting the full force that the worthy Baronet gives to this case, it is after all but the exception to the general rule. The true history of events in Upper Canada, I believe to have been this: A small but desperate minority had determined on a violent revolution; this party might have contained some men so wicked that a love of mischief and a desire for plunder were their governing principles, and others, moved by an attachment to republican institutions; but small as it was, the greater number of those found in its ranks had been driven there by the acts of another equally small and equally desperate minority, who had long monopolized,—and, under the present system, may and will monopolize for a century to come—the whole power and patronage of the government, dividing among them the revenues of the country. The great mass of the people of Upper Canada belonged to neither of these bands of desperadoes. They were equally determined with the one, to uphold British connection; and as equally determined with the other, to get rid of a wretched system of irresponsible administration, under the continuance of which they well knew the Province could never prosper. When Sir Francis Head arrived, he entered the colony—if we are to believe his own account of the matter—almost as ignorant as my imaginary Mayor of Liverpool. Sir Francis admits his ignorance, but denies the consequences that must be deduced from it: that he was led and influenced, in the first acts of his administration, until the compact found him ripe for their own purposes and embroiled even with the moderate men on the other side. Then commenced that extraordinary flight of proclamations, addresses and declamatory appeals; which, winged with the ready pen of a professional author and shot from the long bow of the family compact, created so much false excitement, and carried so much misrepresentation into every corner of the Province. In these the great question at issue in Upper Canada—which was one between the interests of the family compact and the principles of the British Constitution—was winked out of sight; and the people, not only of that, but of the surrounding colonies, were made to believe that they were to choose between British and republican institutions; that Sir Francis and the family compact (Archdeacon Strachan with the Clergy Reserves, one-seventh of the Province; and Attorney-General Hagerman, with the corrupt patronage and influence of administration, under their arms) represented the former; and Mackenzie, and his band of desperadoes, the latter. Thus appealed to, the British population everywhere, as the cunning men at Sir Francis' elbow well knew they would, said, with one voice: "If that is the question, then we are for the British Constitution; and hurrah for Sir Francis Head!'. Mackenzie was an outlaw in a week; his small band of desperadoes was scattered by the energy of the people, the great mass of whom never dreamed of breaking the

connection with the mother country. Then came the period in which the compact glorified themselves and Sir Francis; the fever of loyal excitement in which the miserable minority of officials—feeling strong in the success of their manoeuvres and still stronger in the strength of British thousands profusely spent, regiments of militia to be officered, equipped and paid—began to wreak their vengeance upon every man who had been known to be hostile to their monopoly; and to identify opinions, not more extreme when thoroughly understood, than those held by the most moderate section of the Whigs in England, with "privy conspiracy and rebellion." But the period was fast approaching when this unnatural excitement was to subside; when hundreds of thousands of British subjects, looking steadily through the mists that had been raised around them were to ask of each other: "Has this case been decided upon the true issue? Was that the question?" For evidence of the solemnity with which this inquiry has been put and the all-pervading unanimity with which it has been answered, I refer your Lordship to the meetings which have been held in every section of the Province; to the opinions boldly expressed by every newspaper—with a few, chiefly venal exceptions—printed in Upper Canada; to the bold and determined stand taken by many of the bravest and ablest men who crushed Mackenzie's rebellion and beat back the sympathizers on the frontier; to the extraordinary union of Orangemen and Catholics, Methodists, Baptists, Churchmen and Presbyterians; whose watchwords are British connection and British responsibility, and down with the compact, and the absurd idea cherished by Sir Francis Head, of a government in which the whole responsibility rests on the Governor. If your Lordship doubts the utter explosion of your theory, even in this Province, where for a time I admit it seemed to flourish, the approaching general elections will furnish evidence enough, and even Sir Francis, if he were to come out again with another sheaf of proclamations and addresses, and preach this *unitarian* doctrine of responsibility, would no longer be listened to by the Upper Canadians, who have embraced a higher and purer faith.

Having, as I conceive, then, shown your Lordship that the idea of a colony in which nobody is responsible but the Governor, while his responsibility is only nominal, however delightful it may appear in the eyes of those who have been or hope to be Governors, is one that never can be a favourite with the colonists and has been repudiated and rejected by those of them among whom, for a limited period and under a system of delusion, it seemed to flourish; let me turn your Lordship's attention for a few moments to the doctrine maintained by Lord Glenelg against Sir Francis Head and now put forth by your Lordship in opposition to the Earl of Durham—that the Colonial Secretary is alone responsible, and that the Governor is an agent governing the Province by instructions from him.

Whatever new readings may be given of our unwritten constitutions, this is the one which has always been and always will be the favourite with Colonial Secretaries and under-secretaries, and by which every clerk in Downing Street even to the third and fourth generation yet to come, will be prepared to take his stand. And why? Because to deprive them of this much-talked-of responsibility, which means nothing, would be to deprive them of the power to which they cling; and of the right of meddling interference with every petty question and every petty appointment in thirty-six different colonies. While things remain as they are, the very uncertainty which reigns over the whole colonial system invests the Secretary of State with a degree of power and influence, the dim and shadowy outline of which can scarcely be measured by the eye; but which, from its boundless extent and multiform and varied ramifications and relations, possesses a fascination which few men have been born with patriotic moderation to resist. Though a Secretary of State may occasionally have to maintain, in a particular Province, a doubtful struggle for the whole responsibility and the whole of the power, with some refractory Governor like Sir Francis Head; yet even there he must exercise a good deal of authority and enjoy a fair share of influence; while in all others his word is law and his influence almost supreme. A judge, a crown officer, a secretary, or a land surveyor cannot be appointed without his consent; a silk gown cannot be given to a lawyer without his sanction; while his word is required to confirm the nomination of Legislative Councillors for life and irresponsible Executive Councillors, in every Province, before the Queen's mandamus is prepared. The very obscurity in which the real character of colonial constitutions is involved of course magnifies the importance and increases the

influence of the gentleman who claims the right to expound them. More than one-half the colonists who obtain audiences in Downing Street are sent there by the mystifications in which the principles of the system are involved; while the other half are applicants for offices, which under a system of local responsibility would be filled up, as are the civic offices in Manchester and Glasgow, by the party upon whose virtue and ability the majority of the inhabitants relied. Adopt Lord Durham's principle, and above all, give to each colony a well-defined constitution based upon that principle and embodied in a bill, and "the office" will become a desert. The scores of worthy people with spirits weary of the anomalous and cruel absurdities of the system and sincerely laboring to remove them, now daily lingering in the ante-rooms, would be better employed elsewhere, in adorning and improving the noble countries which gave them birth, and whose freedom they are labouring to establish; while at least an equal number of cunning knaves, whose only errand is to seek a share of the plunder, had much better be transferred to the open arenas in which, under a system of responsibility, public honours and official emolument could only be won. But then the office of Colonial Secretary would be shorn of much power, which, however unwisely exercised, it is always delightful to possess; and the dim but majestic forms of authority which now overshadow half the world would be chastened into reasonable compass; with boundaries, if less imposing and picturesque, for all practical purposes more simple and more clearly defined. Nor would under-secretaries and clerks have so many anxious and often fawning visitors, soliciting their patronage, listening to their twaddle, wondering at their ignorance, and yet struggling with each other for their smiles. The mother country would, it is true, hear less of colonial grievances; Parliament would save much time now devoted to colonial questions; and the people of England would now and then save a few millions sterling, which are required to keep up the existing system by force of arms. But these are small matters compared with the dignity of a Secretary of State.

Here, then, my Lord, you have the reason why your reading of our constitutions is the favourite one in Downing Street. Let us see now whether it is more or less favourable to rational freedom and good government in the colonies, than that advocated by Sir Francis Head. Your authority and that of Lord Glenelg is with me in condemning his, which I have done, as deceptive and absurd; he will probably join me in denouncing yours, as the most impracticable that it ever entered into the mind of a statesman to conceive.

The city of Liverpool shall again serve us for the purposes of illustration. Turn back to the passages in which I have described a Mayor, ignorant of everything, surrounded by irreponsible but cunning advisers, who for their own advantage, embroil him with a majority of the citizens, while his countenance and the patronage created by the taxes levied upon the city are monopolized by a miserable minority of the whole; and insulted and injured thousands, swelling with indignation, surround him on every side. After your Lordship has dwelt upon this scene of heartburning and discontent—of general dissatisfaction among the citizens—of miserable intrigue and chuckling triumph, indulged by the few who squander the resources and decide upon the interests of the many, but laugh at their murmurs and never acknowledge their authority—let me beg of you to reflect whether matters would be made better or worse, if the Mayor of Liverpool was bound, in every important act of his administration, to ask the direction of, and throw the responsibility on another individual, who never saw the city, who knows less about it than even himself, and who resides, not in London, at a distance of a day's coaching from him, but across the Atlantic, in Halifax, Quebec, or Toronto, and with whom it is impossible to communicate about anything within a less period than a couple of months. Suppose that this gentleman in the distance possesses a veto upon every important ordinance by which the city is to be watched, lighted and improved—by which docks are to be formed, trade regulated, and one-third of the city revenues (drawn from sources beyond the control of the popular branch) dispensed. And suppose that nearly all, whose talents or ambition lead them to aspire to the higher offices of the place, are compelled to take, once or twice in their lives, a voyage across the Atlantic to pay their court to him—to solicit his patronage and intrigue for the preferment, which under a better system would naturally result from manly competition and eminent services within the city itself, Your Lordship is too keen-sighted and I trust too frank, not to acknowledge that no form of govern-

ment could well be devised more ridiculous than this; that under such no British city could be expected to prosper; and that with it no body of Her Majesty's subjects, within the British Islands themselves, would ever be content. Yet this, my Lord, is an illustration of your own theory; this is the system propounded by Lord Normanby [1] as the best the present Cabinet can devise. And may I not respectfully demand why British subjects in Nova Scotia, any more than their brethren in Liverpool, should be expected to prosper or be contented under it; when experience has convinced them that it is miserably insufficient and deceptive, repugnant to the principles of the constitution they revere, and but a poor return for the steady loyalty which their forefathers and themselves have maintained on all occasions?

One of the greatest evils of the colonial constitution as interpreted by your Lordship is, that it removes from a province every description of responsibility, and leaves all the higher functionaries at liberty to lay every kind of blame at the door of the Secretary of State. The Governor, if the colonists complain, shrugs his shoulders and replies that he will explain the difficulty in his next despatch, but in the meantime his orders must be obeyed. The Executive Councillors, who under no circumstances are responsible for anything, often lead the way in concentrating the ire of the people upon the Colonial Secretary, who is the only person they admit their right to blame. It is no uncommon thing to hear them, in Nova Scotia, sneering at him in public debate; and in Canada they are accused of standing by while Lords Glenelg and Melbourne were hanged in effigy and burned in the capital, encouraging the populace to pay this mark of respect to men, who, if your Lordship's theory is to be enforced, these persons at all events should have the decency to pardon, if they cannot always defend.

I trust, my Lord, that in this letter I have shown you that in contemplating a well-defined and limited degree of responsibility to attach to Executive Councillors in North America, I have more strictly followed the analogies to be drawn from the constitution, than has your Lordship, in supposing that those officers would necessarily overstep all bounds; that in divesting the Governor of a vague and deceptive description of responsibility, which is never enforced, and of a portion of authority which it is impossible for him wisely to exercise, and yet holding him to account for what does fall within the scope of his character as Her Majesty's representative—the constitutional analogy is still preserved, his dignity left unimpaired, and the difficulties of his position removed. I trust also that I have proved to your Lordship that the colonial constitutions, as they at present stand, are but a medley of uncertainty and confusion; that those by whom they are administered do not understand them; and lastly, that whether Sir Francis Head's interpretation, or your own be adopted, neither offers security for good government; the contest between them merely involving a difference of opinion as to who is to wield powers that neither governors nor secretaries can usefully assume, and which of these officers is nominally to bear the blame of blunders that both are certain to commit.

## CVIII

## JOSEPH HOWE TO LORD JOHN RUSSELL

[Trans.: Chisholm, *op. cit.*]

My Lord,

The next passage of the Speech of the 3rd of June, which I am bound to notice, is that in which you say:—

"The Governor might ask the Executive Council to propose a certain measure. They might say that they could not propose it unless the members of the House of Assembly would adopt it, but the Governor might reply that he had received instructions from home commanding him to propose that measure. How, in that case, is he to proceed? Either one power or the other must be set aside; either the Governor or the House of Assembly; or else the Governor must become a mere cipher in the hands of the Assembly, and not attempt to carry into effect the measures which he is commanded by the Home Government to do."

This objection is based upon the assumption, that the interests of the mother country and those of the colonies are not the same; that they must be continually in a state of conflict; and that there must be some course of policy

[1] Russell's predecessor and Glenelg's successor in the colonial office.

necessary for the Imperial Government to enforce, the reasons for which cannot be understood in the colonies, nor its necessity recognized. This may have been the case formerly in the West Indies, where the conflict was one between the ideas engendered by a state of slavery and a state of freedom; but it is not true of the North American Provinces, to the condition and claims of which my observations are chiefly confined. Of all the questions which have agitated or are likely to agitate Nova Scotia, New Brunswick, of Prince Edward Island, how few, when rightly understood, can be said to involve any Imperial interests; or trench upon any principle dear to our brethren at home, or the concession of which could disturb the peace of the Empire? Have any of these colonies claimed the right to regulate the foreign trade or foreign policy of the Empire? Have they ever interfered, except to carry out the views of Her Majesty's Government, with any of the military or naval operations? Have they exposed a grievance, the continued existence of which is indispensable to the well-being of the British Islands; or demanded a right, the concession of which would not be serviceable to themselves, without doing the least injury to the people of Britain? For what have they asked? For the control of their own revenues and the means of influencing the appointment and acts of the men who are to dispense them; and who are, besides, to distribute hundreds of petty offices, and discharge functions manifold and various within the Colony itself? The people of England have no knowledge of these matters, nor any interest in them, to give them the right to interfere. Interference does much mischief to the Colonists, and can do no good to their brethren across the water. If British statesmen would let these things alone—and it is over these only that we claim to enforce responsibility—and confine themselves to those general arrangements affecting the whole Empire, of which we admit them to be the best judges, and in the conduct of which we never asked to take a part, it would be impossible to conceive how such a case could arise as that supposed by your Lordship, or how the Governor could be charged with "a measure which his Executive Council would not dare to propose." Admitting that there might be some subjects requiring discussion in the Provinces, but which the Colonists were not prepared to adopt, surely an Executive Councillor could be got, even if he were opposed to the views of the ministers, to submit the measure and explain those views to the popular branch; or might there not be "open questions" in the Colonies as at home?

The conclusion at which my mind arrives, then, after the best attention that I can give to this branch of the subject, is, that if the duties and responsibilities of government are fairly and judiciously divided between the Imperial and Colonial authorities, no such case as that assumed by your Lordship can occur; and, if it should, surely the good sense of all parties concerned may safely be trusted, to avoid any violent or unpleasant collision. But did it never occur to your Lordship to inquire, whether the very evil anticipated, as an insuperable objection to the new system, does not disfigure and annually occur under the old? What else were the Executive Councillors in Upper and Lower Canada doing for a series of years but "proposing certain measures," to be as certainly rejected by the popular branch? What else are they about now in Newfoundland? What but this were they doing in New Brunswick, down to the close of Sir Archibald Campbell's Administration? In all these Provinces a state of constant collision between the Executive and the popular branch, which could by no possibility arise under the system I contemplate, would answer the objection, even if the difficulty suggested could be fairly taken into account. If it be said that the Councillors now do not refuse to propose measures, I answer, But if the Legislatures invariably reject them, does government gain anything, or is public business advanced by the system? What a figure did the Executive cut in Nova Scotia, in 1838, when the Councillor who brought down from the Governor a grave proposition, led the opposition against it? And how stand things in this Province now? Are not all the Councillors selections from a lean minority of the commons, in which body almost every debate terminates in a vote of implied want of confidence in them; and where the Governor they surround has, on several occasions, only been saved from an insulting vote of censure by the good temper and moderation of the majority? This is a state of things too ridiculous to be long continued. To me it seems essential that Her Majesty, in every colony, should be represented by an Executive not only willing "to attempt" but "able to carry" any measures that it may be necessary to propose.

The next objection taken by your Lordship to the introduction of Provincial

responsibility, one eminently calculated to have weight with the body you addressed, and to alarm the timid everywhere, was drawn from an application of the principle, to the management of foreign affairs. "If," says your Lordship, "the Assembly of New Brunswick had been disposed to carry the point in dispute with the North American States hostilely, and the Executive Council had been disposed to aid them, in my opinion the Governor must have said that his duty to the Crown of this country, and the general instructions which he had received from the minister of the Crown, did not permit him to take that course, and, therefore, he could not agree with the Executive Council to carry into effect the wish of the Assembly. That is allowed. Does not, then, its very exception destroy the analogy you wish to draw, when, upon so important a point as that of foreign affairs, it cannot be sustained?" Your Lordship, in delivering this passage, of course, was not aware that, without the alteration of a single syllable, you answered the very objection that yourself had raised. If the Executive Council of New Brunswick advised Sir John Harvey to declare war upon the State of Maine, "he must have said that his duty to the Crown and his instructions did not permit him to take that course." Most certainly he would, if a measure so ridiculous had been attempted in New Brunswick, which nobody, who knows anything of that Province, could for a moment imagine. I do not believe that there are ten men in it, certainly there are not fifty in all the lower Provinces put together, who do not know that the Sovereign alone has the right to declare war upon foreign powers; and who are not willing that, upon all the relations of the Colonies with these, and with each other, the Imperial Government shall decide. A few of the New Brunswickers blamed Sir John Harvey for not acting upon Her Majesty's instructions to maintain exclusive jurisdiction over the disputed territory, notwithstanding the advice received from the Minister at Washington; but, if those instructions had not existed, and had not been positive, no one would have been idiot enough to suppose that Sir John Harvey would have been bound to make war, on a point of honour or policy newly discovered by his Executive Council, and upon which Her Majesty's government had had no opportunity to decide. Suppose, when Parliament was granting a charter to Hull, it was objected that the Mayor might be advised to make war upon Sweden (and, in the case of an elective officer, the danger would be greater than if he were appointed by the Crown,) would not the same House of Commons that thought it unsafe to let a Colony manage its internal affairs for fear it would engage in foreign wars, laugh at the possibility of such an absurdity being committed by any body of Englishmen out of Bedlam? Why then should it be taken for granted that we are not English in our habits and opinions, our education and training, our capacity to discern the boundaries of authority; and that therefore it would be unsafe to depend upon our wisely exercising powers, which, in the British Islands, millions exercise for their own security and without danger to the state? In the case of Hull, if the objection were gravely urged, the ready answer would be, "No greater powers can be exercised than are granted in the bill; and if there is the least danger of the city authorities doing anything so ridiculous, put in a clause that shall restrain them." And I say—after soberly protesting that the very suspicion of such an attempt is an insult to the understanding, and an imputation upon the character of our population, which they do not deserve—that if you wish "to make assurance doubly sure," put a clause into the bill which concedes the principle of responsibility so far as relates to domestic affairs, and by which all such belligerent Councillors shall be expressly restrained.

Whether this point were or were not thus defined, that any Executive Council, merely because they were responsible to the people, would, after receiving such an answer as your Lordship admits a British Governor must give, proceed in defiance of his authority, to levy war upon a friendly state, I cannot for a moment believe. If they did, they would certainly so completely fail, and render themselves so supremely ridiculous, that the attempt would not be likely to be repeated, at least for a century to come. Let us suppose the case to have occurred in New Brunswick: that the Executive Council being responsible, had advised Sir John Harvey to proceed hostilely; and that, on his declining, they had levied war. In the first place, as all the regular troops were at Sir John's disposal, as Commander-in-Chief within the Province, and not merely as civil Governor, they not only could not have moved a soldier, but would have had the whole military force of that and the adjoining Provinces against them. As the Gover-

nor's order to the colonels and officers commanding the militia is indispensable before a single step can be taken, under the laws by which that force is embodied, of course no hostile order would have been given, nor could those laws have been modified or changed without Sir John's assent. And if it be urged, that volunteers would have flocked to the aid of the Executive Council, may I not inquire where they would have obtained arms and ammunition, when all the military munitions and stores were deposited in military warehouses, under the care of commissaries and officers of ordnance responsible only to the Crown? Oh! no, my Lord, whatever effect such imaginary cases as these may have on men at a distance, unacquainted with the state of society in British America and the general intelligence which prevails; here they are laughed at, as the creations of a fertile imagination taxed to combat political improvements that were feared without being understood. If, even under the federative government of the United States, in which each state is much more independent of the central authority than any Colony would be under the system I contemplate, this right of private war has only been once asserted, by a single State, in more than half a century, and then was scouted all over the Continent, is it to be supposed that British subjects will pay less respect to the authority of their Queen than do republican Americans to that of their President?

There is one bare possibility, which your Lordship has not suggested, in opposition to the new system, and yet it is scarcely more ridiculous than some that have been urged; that the Colonial Councillors might claim the control of the squadron upon the North American coast, as well as of the land forces, in their anxiety to engage in foreign wars. The danger in this case would be nearly as great as in the other; for, in modern warfare, a fleet is nearly as necessary as an army; and yet, it is certain that the admiral upon the station would know how to treat such a claim, should it be preferred by a Council, who, in the wanton exercise of authority, were disposed to transgress all bounds.

The next objection which I am bound to notice, is given in the report: "Let us suppose that an officer of the militia in Upper Canada, after an action, was to order that the persons taken in that action should be put to death on the field. I can conceive it possible, in a state of exasperation and conflict with the people of the neighbouring States, that the Assembly might applaud that conduct, and might require that it should be the rule and not the exception,—that all invaders of their territory should be treated in that manner, and that the parties should be put to death without trial. Supposing that to be the case; could the Government of this country adopt such a rule? Could the Secretary of State for the Colonies sanction such a rule, and not decide, as my honourable friend the under-secretary has done, that the practice should meet with his decided reprehension?"

Now, my Lord, admitting that such a case might occur once in half a century, under the new system, let me remind your Lordship that it has already occurred under the old. If it is to have any weight, the fact of its occurrence in a Province in which the Executive Council is irresponsible and the Colonial Secretary is in the exercise of his full powers, makes in favour of my argument; while I have a right to deny, until proof is furnished, that it could occur, if matters were more wisely ordered, and a more rational system established, by which all temptations to foreigners to make inroads into British Provinces, speculating upon the disaffection of the people, would be removed. But, my Lord, life has been taken under your system—"death" has been inflicted "without trial," illegally, as you infer—and has any punishment followed? Have the laws been vindicated? No! Then why not? Simply, I presume, because your beautiful mode of government has produced such a state of things in a British Province, that the ministers of the Queen dare not bring the man charged with this high offence to trial. Under a system of responsibility, by which the population were left to manage their domestic affairs, I hold that no such violation of law would be likely to occur, and that, if it did, investigation would be as safe, and punishment as certain, as though a crime had been committed in Middlesex, or Surrey.

I have thus disposed, my Lord, of the military questions; and, as I have left Her Majesty and her representatives in full control of the army and navy and of the militia force of British America, and have asserted no claim of the Colonists to interfere with foreign treaties and diplomatic arrangements affecting the empire at large; I think, if peace be not maintained with foreign states, the punishment for offences strictly military be not awarded, the blame will not rest with the

Executive Councillors, who are to exercise no jurisdiction over these matters, and cannot be responsible if others fail in their duty.

Let me now turn to another class of objections, arising out of our Colonial and foreign trade. "Again," says your Lordship, "neither could this analogy be maintained with regard to trade between Canada and the mother country, or Canada and any other country. How then can you adopt a principle from which such large exceptions are to be made? If you were to do so, you would be continually on the borders of dispute and conflict; the Assembly and the Executive, on the one hand, requiring a certain course to be pursued, while the Governor, on the other hand, would be as constantly declaring that it was a course he could not adopt; so that, instead of furnishing matter of content and harmony in these Provinces, you would be affording new matter for dispute and discontent if you were to act upon this supposed analogy." Now, my Lord, I feel it my duty to state, that you may take from any part you please to select, of England, Ireland, or Scotland, two hundred thousand persons, and among them you will not find a larger number than are to be found in Nova Scotia, well informed as to the degree of authority in matters of trade, which, for the good of the whole empire and the preservation of the advantages in which all are to participate, it is necessary to confide to the care of the Sovereign and the wisdom of the Imperial Parliament. The great corporations of London, of Bristol, and of Liverpool, do not presume to interfere with these, except by petition and remonstrance, neither do we. Each of these cities has the right to levy small duties within their own limits, for matters of internal regulation, or to aid public improvements; and these rights they exercise, in common with us, when they do not contravene any British statutes necessary for the protection of the trade of the empire. But, if it can be shown that a law bears unequally upon London or Halifax, and that a flagrant case of hardship exists; or if the industry of any portion of the people, either in England or the Colonies is taxed, while no corresponding advantage is reaped by any other portion; or that, if reaped, it is an unfair and illegitimate advantage,—an appeal is made to Parliament. We have hitherto been contented, although not directly represented in that Assembly, to abide the result of that appeal; or to pass bills, taking our chance of their being assented to in England. The same thing would occur, even if the Executive Council was responsible; for, upon this point, there is no part of our population prepared to set up absurd or irrational claims. If Parliament should undertake to legislate directly against our interests; to cut up our commerce, and prevent the growth of domestic industry; and, after fair notice and ample proof of injury, were to persist in such a course; why then a state of things would arise, which similar policy produced elsewhere, in other times, and upon the results of which either responsible or irresponsible Councils would exercise but little influence. But, as political economists at home are every day becoming convinced that the more liberty they afford to the Colonist to conduct his commercial operations the greater will be his demand for British manufactures; and as, under the guidance of this enlightened policy, the laws of trade and navigation are annually becoming less restrictive, it is not probable that difficulties, which were never insuperable, will all of a sudden admit of no rational remedy; or that the boundaries of Colonial and Imperial authority, now so well understood, and the recognition of which is so easily enforced, will often be called in question on either side. If the Colonists assert rights which do not belong to them, and persist in their contumacy, disturbing solemn treaties and setting acts of Parliament at naught; why then they have broken the social compact: it is a case of rebellion and they must be put down.

Let us reduce the difficulty to practice, for the purpose of illustration. Suppose that both branches of the Legislature pass a law by which a heavy duty is laid on British broadcloths, and those from the United States are admitted duty free; and that the Executive Council, being responsible, advise the Lieutenant-Governor to assent to it. Such an absurd piece of bad faith as this could never be attempted in the lower Provinces; for public opinion would never sanction any interference with the general laws not intended to remedy abuses, or that struck at Colonial without promoting British prosperity; nor would any changes be popular which violated the fraternal comity by which British subjects everywhere are bound to encourage and protect each other. But I have supposed the law passed and presented. The Governor would say in this case, as he now invariably says—as your Lordship admits he must say, if urged to provoke a foreign

war: "Gentlemen, you are exceeding your powers. To legislate for your own advantage is one thing; to legislate directly against your brethren at home, for the advantage of foreigners, is another. This bill must be either modified or rejected, or reserved for Her Majesty's assent before it can go into operation." If the parties urging it persisted, a dissolution might be tried; and an appeal to British subjects, in a case where the Governor was clearly right and his advisers wrong, would never be made in vain; particularly when aided by the Constitutional opposition, which, under a system of responsibility and manly competition, would exist in every Colony. But if it failed; and such an almost impossible thing were upon the cards, as that a majority could be found in Nova Scotia to sustain such an act, or anything bearing a resemblance to it, then a case would have occurred for the interference of the Imperial authorities, who should say to us frankly: If you will come into unnatural and hostile collision, the weakest has the most to fear.

Had your Lordship been as familiar with the mode of dealing with such subjects as most Colonists are who have watched the proceedings of Colonial Assemblies, you would have been satisfied that no danger was to be apprehended from violent collisions about matters of trade. When a new duty is proposed in Nova Scotia or a reduction suggested, the first question asked on all sides is, Will the proposition violate the letter or does it even run counter to the spirit of the Imperial Acts? If it does, in eight cases out of ten, the person bringing the measure forward drops it, on being assured of the fact. In the ninth case, where a doubt exists as to the policy and wisdom of Imperial legislation it is found, on inquiry, that the clause which seemed to press upon us, originated in a wide view over the whole field of commerce, which British statesmen, often better than others whose positions afford fewer advantages, are enabled to take and that its repeal would inflict an injury and not confer a benefit. The tenth case is perhaps one in which the Imperial Parliament, either from haste, or prejudice, or insufficient information, has committed an error in political economy, or inflicted a wound upon Colonial without benefiting British industry. In this case (and they only occur once in a great while) no one ever dreams, that, as your Lordship expresses it, the Imperial Legislature is to be "overruled" by that of the colony. We never doubt but that an appeal to the good sense and the justice of our brethren over the water will be successful. A bill is passed, perhaps, to meet the difficulty; and an explanation of the facts and reasoning in which it originated, is sent with it, in the form of an address to the throne, and in most cases is found to be successful.

This is the mode at present. What reason is there to suppose that it would be much changed, if we had an Executive Council, whose powers and responsibilities did not extend to matters of general commerce, already provided for by Imperial legislation? If we are so fond of violent conflicts and factious opposition, what hinders us from indulging our propensities now? Shall we be less considerate the more kindly we are treated? Shall we have less respect for Imperial legislation, when we see that it leaves us the entire management of our domestic affairs and only deals with those great interests which transcend our authority and are beyond our control? Suppose twelve Nova Scotians, who are not responsible to any authority under Heaven, are made accountable to the rest of their countrymen, shall we have a man the more for forcible resistance than we have now—or a gun, a pike, a bomb, or a barrel of powder?

I have thus, my Lord, gone over the arguments urged by your Lordship in the speech of the 3rd of June. I have omitted none that appear to me to have the slightest bearing upon the great question at issue, and I trust I have given to each a fair and satisfactory answer. I have written not only under a solemn sense of duty, but with a full assurance that sophistry, woven around this question, either on one side of the Atlantic or the other, would be torn to shreds in the conflict of acute and vigorous minds now engaged in its discussion. Had your Lordship, in announcing the decision of the Cabinet, forborne to state the reasons upon which that decision was founded, I might, like counsel at the bar under similar circumstances, have felt myself compelled to acquiesce in a judgment, neither the justice nor the policy of which I could fathom. But when the arguments were stated, and when I saw a question involving the peace and security of six extensive Provinces, and the freedom and happiness of a million and a half of British subjects, disposed of by a mode of reasoning which I knew to be deceptive and unsound,—when I saw, in fact, that the parties claiming

their rights were to be turned out of court, with all the arguments and all the evidence on their side, I felt that to remain silent would be to deserve the social and political degradation which this unjust decision was to entail on my countrymen and myself; to earn the Helot mark of exclusion from the blessings of that Constitutional freedom, which our forefathers struggled to bequeathe; and which we should never cease to demand, as a patrimony that runs with our blood, and cannot be rightfully severed from our name. . . .

JOSEPH HOWE.

## CIX

## JOSEPH HOWE TO LORD JOHN RUSSELL

[Trans.: Chisholm, *op. cit.*]

My Lord,—The business of factious demagogues of all parties is to find fault with everything, to propose nothing practical, to oppose whatever is suggested, to misrepresent and to defame. The object of honest and rational politicians ought to be to understand each other—to deal frankly, abhorring concealment, that mistakes may not be made about facts, terms or intentions; to deal fairly, giving credit for a desire to elicit truth, and a wish to weigh in a just balance both sides of every question. Having put before you such evidence as I hope will lead your Lordship's mind to the conclusion that the system by which the North American Colonies are at present governed, must be abandoned, it is not improbable that your Lordship may inquire what it is that we are desirous to substitute for that system? The demand is a reasonable one. The party who seek this change are bound to prove that they have a safe and intelligible remedy for the evils of which they complain. If I cannot show your Lordship that, without endangering the authority of the mother country over her Provinces, weakening the constitutional powers of the Crown, or trenching on the high privileges and wide range of duty assigned to the Imperial Parliament, a better form of government than that which I am anxious to overturn—one more nearly conforming to the practice and spirit of the Constitution, as understood at home—to the wants and peculiar situation of these Colonies, and less repugnant to the feelings and prejudices of Englishmen everywhere, can be established, then I must quit the field of argument, and cannot complain if your Lordship adheres to your own opinions.

From what has been already written, it will be seen that I leave to the Sovereign, and to the Imperial Parliament, the uncontrolled authority over the military and naval force distributed over the Colonies; that I carefully abstain from trenching upon their right to bind the whole empire, by treaties and other diplomatic arrangements, with foreign states; or to regulate the trade of the Colonies with the mother country, and with each other. I yield to them also the same right of interference which they now exercise over Colonies and over English incorporated towns; whenever a desperate case of factious usage of the powers confided, or some reason of state, affecting the preservation of peace and order, call for that interference. As the necessity of the case, the degree and nature of this interference, would always be fully discussed by all parties concerned, I am not afraid of these great powers being often abused, particularly as the temptations to use them would be much lessened if the internal administration were improved.

The Colonial Secretary's duties should be narrowed to a watchful supervision over each Colony, to see that the authority of the Crown was not impaired, and that Acts of Parliament and public treaties were honestly and firmly carried out; but he should have no right to appoint more than two or three officers in each Province, and none to intermeddle in any internal affair, so long as the Colonial Government was conducted without conflict with the Imperial Government and did not exceed the scope of its authority. This would give him enough to do, without heaping upon him duties so burdensome and various that they can not be discharged with honour by any man, however able; nor with justice or safety to the millions whose interests they affect. His responsibility should be limited to the extent of his powers; and as these would be familiar to every Englishman, exposure and punishment would not be difficult, in case of ignorance, incapacity or neglect.

I have shown, in the illustration drawn from the city of Liverpool, that most Governors come out to Colonies so ignorant of their geography and topography, climate, productions, commerce, resources and wants; and above all, of the parties, passions and prejudices which divide them; and of the character, talents and claims of the men by whom the population are influenced and led, that for the first six or twelve months they are like overgrown boys at school. It is equally clear, that while the business of government must move on, and the administration commence from the day on which the new Governor arrives, the schoolmasters, from whom all his facts are derived—from whom he gathers his views of internal affairs, and his impressions, not only of different parties, but of individuals in each party,—are the irresponsible Executive Councillors, whom the present system calls around him; and who, possessed of such advantages, rarely fail, before he can by any possibility escape from their toils, to embroil him with the popular branch of the Legislature, and the mass of the people by whom it is sustained.

Now let us suppose, that when a Governor arrives in Nova Scotia, he finds himself surrounded, not by this irresponsible Council, who represent nothing except the whims of his predecessors and the interests of a few families (so small in point of numbers, that but for the influence which office and the distribution of patronage give them, their relative weight in the country would be ridiculously diminutive), but by men who say to him: "May it please your Excellency, there was a general election in this Province last month, or last year, or the year before last, and an administration was formed on the results of that election. We, who compose the Council, have ever since been steadily sustained by a majority of the commons and have reason to believe that our conduct and policy have been satisfactory to the country at large." A Governor thus addressed, would feel that at all events he was surrounded by those who represented a majority of the population; who possessed the confidence of an immense body of the electors, and who had been selected by the people who had the deepest interest in his success, to give him advice and to conduct the administration. If he had doubts on this point—if he had reason to believe that any factious combination had obtained office improperly, and wished to take the opinions of the country; or if the Executive Council sought to drive him into measures not sanctioned by the charter; or exhibited a degree of grasping selfishness which was offensive and injurious, he could at once dissolve the Assembly and appeal to the people: who here, as in England, would relieve him from doubt and difficulty; and, fighting out the battle on the hustings, rebuke the Councillors if they were wrong. This would be a most important point gained in favour of the Governor; for he is now the slave of an irresponsible Council, which he cannot shake off; and is bound to act by the advice of men, who, not being accountable for the advice they give, and having often much to gain and nothing to lose by giving bad advice, may get him into scrapes every month, and lay the blame on him. The Governors would, in fact, have the power of freeing themselves from thraldom to the family compacts, which none of them can now escape by the exercise of any safe expedient known to our existing Constitutions. It will be seen, too, that by this system, whatever sections or small parties might think or say, the Governor could never, by any possibility, become, what British Governors have of late been everywhere, embroiled with the great body of the inhabitants over whom he was sent to preside. The Governor's responsibility would also be narrowed to the care of the Queen's prerogative, the conservation of treaties, the military defence, and the execution of the Imperial Acts; the local administration being left in the hands of those who understand it, and who were responsible. His position would then be analogous to that of the Sovereign—he could do no wrong in any matter of which the Colonial Legislature had the right to judge; but would be accountable to the Crown, if he betrayed the Imperial interests committed to his care.

Executive Councillors now are either heads of departments, or members of the two branches who are generally favourable to the policy of these, and disposed to leave their emoluments intact. One or two persons, of more independent character, and slightly differing from the others upon a few points are sometimes admitted; but a vast preponderance in favour of the views of the official compact, is always, as a matter of course, maintained. The heads of departments are always very well paid for their trouble in governing the country, by the enormous official salaries they receive; their colleagues are either looking for office, or have

means of providing for their relatives and friends; while, if it should so happen, that such a thing as a Colonial Executive Councillor can be found for any length of time, in office, who has not served himself or his friends, the title, and consciousness of possessing for life the right to approach and advise every Governor, and give a vote upon every important act of administration, without a possibility of being displaced or called to account for anything said or done, is no mean reward for the small amount of labour and time bestowed. Formerly, these people, in addition to other benefits, obtained for themselves and their friends immense tracts of crown land. This resource is now cut off, by the substitution of sales for free grants; but, looking at the Executive Council, or Cabinet, as it exists in any of the North American Provinces at present, we find a small lot of individuals, responsible neither to the Queen, the Secretary of State, the Governor nor the people; who owe their seats to neither, but to their relatives and friends through whose influence and intrigues they have been appointed; and who, while they possess among them some of the best salaries and nearly all the patronage of the country, have a common interest in promoting extravagance, resisting economy, and keeping up the system exactly as it stands. It will be perceived, that such a body as this may continue to govern a Colony for centuries; like the Old Man of the Mountain, who got upon Sinbad's back, ordinary exertions cannot shake it off. To understand more clearly how un-English, how anti-constitutional, how dangerous this body is, it is only necessary to contrast it with what it ought to resemble, but never does. In England, the government of the country is invariably carried on by some great *political* party, pledged to certain principles of foreign or domestic policy, which the people for the time approve; but the cabinet in a Colony is an *official* party, who have the power for ever to keep themselves and their friends in office, and to keep all others out, even though nineteen out of every twenty of the population are against them. What would the people of England say, if some twenty families, being in possession of the Treasury, Horse Guards, Admiralty, Colonial Office, had the power to exclude Whigs, Tories, and Radicals; to laugh at hostile votes in the Commons, and set the country at defiance; to defend each other against the crown and the people; to cover ignorance, incapacity, corruption, and bad faith? Would they bear such a state of things for a week? And yet your Lordship seems to think that we should bear it, for an indefinite period, with patience.

Now for this body I propose to substitute one sustained by at least a majority of the Electors; whose general principles are known and approved; whom the Governor may dismiss, whenever they exceed their powers; and who may be discharged by the people whenever they abuse them; who, instead of laying the blame, when attacked, upon the Governor, or the Secretary of State, shall be bound, as in England, to stand up and defend, against all comers, every appointment made and every act done under their administration. One of the first results of this change would be to infuse into every department of the administration a sense of accountability, which is now nowhere found—to give a vigorous action to every vein and artery now exhibiting torpidity and languor—and to place around the Governor, and at the head of every department of public affairs, the ablest men the Colony could furnish; men of energy and talent, instead of the brainless sumphs, to whom the task of counselling the Governor, or administering the affairs of an extensive department, is often committed under the present system. In England, whether Whigs, Tories or Radicals are in, the Queen is surrounded, and the public departments managed, by some of the ablest men the kingdom can produce. But suppose a mere official faction could exclude all these great parties from power, how long would the government possess the advantage of superior abilities to guide it? Would it not at once fall far below the intellectual range which it now invariably maintains?

But, it may be asked, would not the sudden introduction of this system work injustice to some who have taken offices, in the expectation of holding them for life? Perhaps it might, but even if this were unavoidable, the interests of individuals should give way to the public good. The Boroughmongers had the same objections to the Reform Act, recorders and town-clerks to that which cleansed the corporations. This, like all minor difficulties, might easily be provided for; and I am sure that there are but few of those seeking to establish responsible government who desire to overturn even a bad system in a spirit of heartless vindictiveness.

The Colonies, having no hereditary peerage, the Legislative Council has been constructed to take its place. From the difficulty of making it harmonize with the popular branch, some politicians in Lower Canada—and it was said that the Earl of Durham, at first, inclined to the opinion—thought it might be abolished. I think there is no necessity for this; first, because it would destroy the close resemblance which it is desirable to maintain between our Institutions and those of the mother country; and again, because a second legislative chamber, not entirely dependent upon popular favour, is useful to review measures and check undue haste or corruption in the popular branch. Besides, I see no difficulty in maintaining its independence, and yet removing from it the character of annual conflict with the representative body, by which it has been everywhere distinguished.

The main object of the Executive Council being the preservation of a system by which they enjoy honours, office and patronage, uncontrolled and uninfluenced by the people; and they having the nomination of Legislative Councillors, of course, they have always selected a majority of those whose interests and opinions were their own, and who could help them to wrestle with, and fight off the popular branch. Hence the constant collision, and general outcry against the second chamber. The simply remedy for all this appears to be, to introduce the English practice: let the people be consulted in the formation of the Executive Council; and then the appointments to the Legislative will be more in accordance with the public sentiment and general interest, than they are now. I should have no objection to the Legislative Councillors holding their seats for life, by which their independence of the Executive and of the people would be secured, provided they were chosen fairly by those to whom, from time to time, the constituency, as at home, entrusted the privilege; and not as they are now selected, to serve a particular purpose, and expressly to wrangle, rather than to harmonize with the popular branch. The House of Lords includes men selected by all the administrations which the people of Britain have called into power. The Houses of Lords, in the Colonies, have been created by all the administrations which the people never could influence or control.

Some members of the second branch should, of course, have seats in the Executive Council, because in that Chamber also, the acts and the policy of the government would require to be explained; but here, as in England, though very desirable, it would not be essential that the administration should always be sustained by a majority in the Upper House.

One of the first effects of a change of system would be a decided improvement in the character of all the Colonial Assemblies. The great centre of political power and influence would in the Provinces, as at home, be the House of Commons. Towards that body the able, the industrious, the eloquent, and the wealthy, would press with ten times the ardour and unanimity which are now evinced; because then, like its great prototype in Britain, it would be an open and fair arena, in which the choice spirits of the country would battle for a share in its administration, a participation in its expenditure, and in the honour and influence which public employment confers. Now a bon vivant, who can entertain an aide-de-camp; a good looking fellow, who dances with a Governor's lady; or a cunning one, who can wheedle a clerk or an under-secretary in Downing Street, may be called to take a part in governing a Province for the period of his natural life. Then, these disreputable and obscure channels of advancement would be closed; and the country would understand the reason, and feel the necessity for every such appointment; and the population would be driven to cultivate those qualities which dignify and adorn our nature rather than debase it. Now, any wily knave or subservient fool feels that his chance is as good as that of the most able and upright man in the Colony; and far better if the latter attempts to pursue an independent course; then, such people would be brought to their proper level, and made to win their honours fairly before they were worn.

Another improvement would be the placing of the government of a Colony as it always is in England, in a majority in the Commons, watched, controlled, and yet aided by a constitutional opposition. Under the present system, the *government* of a colony is the *opposition* of the Commons and often presents in that body the most unseemly and ridiculous figure. Numberless instances might be given of this. The three Executive Councillors who sit in the Assembly of Nova Scotia have been resisting, in miserable minorities, on a dozen divisions

during the last two sessions, votes by which the Commons recorded a want of confidence in them and their party; and, in fact, the government, instead of taking the lead in public measures with the energy and ability which should belong to a government, cannot take a single step in the Assembly without the sanction of its opponents. Every emergency that arises and for which an administration ought to be secure of a majority, presents some absurd illustration of the system. When the border difficulties with the State of Maine occurred last winter, the Government of Nova Scotia had not the power to move a single man of the militia force (the laws having expired), or to vote a single shilling, until the majority came forward, as they always have done, in the most honourable manner, and, casting aside all political differences, passed laws for embodying the militia, and granted £100,000 to carry on the war. But, will your Lordship believe, will it be credited in England, that those who voted that money; who were responsible to their constituents for its expenditure, and without whose consent (for they formed two-thirds of the Commons) a shilling could not have been drawn, had not a single man in the local cabinet by whom it was to be spent, and by whom, in that trying emergency, the Governor would be advised? Nor are things better when the Legislature is not in session. In consequence of the establishment of steam navigation, a despatch was sent out this spring, after the House was prorogued, requiring the Governor of this Province to put the main roads in thorough repair. Of course he had no means to accomplish the object, nor could his Executive Council guarantee that a single shilling thus expended would be replaced or that a vote of censure would not be passed upon him if he spent one; and to obviate the difficulty, they were seen consulting and endeavouring to propitiate the members of the majority, whose places, upon such terms, they were contented to occupy and to which, as far as I am concerned, if such humiliations are to be the penalty, they are heartily welcome.

It has been objected to the mode proposed, that it would lead to the rotation of office, or extensive dismissals of subordinates, practised in the United States. But no person abhors that system more than myself, nor has it found any favour in the Colonies, where the British practice is preferred, of removing the heads of departments only. To those who are afraid of the turmoil and excitement that would be produced, it is only necessary to say, that if upon the large scale on which the principle is applied at home, there is no great inconvenience felt, how much less have we to fear where the population is not so dense, the competition not so active, nor the prizes so gigantic. A ministry that in England lasts two or three years is supposed to fulfil its mission; and a quadrennial bill is considered unnecessary, because Parliament, on the average, seldom sits longer than three or four years. As, under a system of responsibility, the contest for power would be fought out here as it is in England, chiefly on the hustings; an administration would, therefore, last in Nova Scotia until the quadrennial bill was passed, for six years certainly—two years more than the Governor, unless specially continued, is expected to hold his appointment; and if it managed judiciously, there would be nothing to prevent it from holding the reins for twenty or thirty years. Of course, an Executive Council in the Colonies should not be expected to resign upon every incidental and unimportant question connected with the details of government; but, whenever a fair and decisive vote, by which it was evident that they had lost the confidence of the country, was registered against them, they should either change their policy, strengthen their hands by the accession of popular talents and principles, or abandon their seats and assume the duties and responsibilities of opposition. If there was any doubt as to what the nature of such votes should be, the Parliamentary usage would be the guide on this as on all minor matters.

One of the greatest evils of the present form of government is, that nothing like system or responsibility can be carried into any one branch of the public service. There are, exclusive of military and road commissions, nearly nine hundred offices to be filled, in the Province of Nova Scotia alone; all essential to the administration of internal affairs, not one of them having anything to do with Imperial interests. And will it be believed in England, that the whole of this patronage is in the hands of a body whom the people can never displace? that the vast majority in the Commons have not the slightest influence in its distribution? while the greatest idiot who gives his silent and subservient vote in the minority, is certain of obtaining his reward? But the evil does not stop here. It is utterly impossible for the people either to bring to punishment or to

get rid of a single man of the whole nine hundred, if the local government chooses to protect him.

Perhaps the most cruel injury that the system inflicts on the Colonists, arises from the manner in which they are compelled to conduct their internal improvements. This has been noticed by Lord Durham. But perhaps his Lordship did not fully comprehend the reasons which render the mode—however anomalous and injurious—in some degree acceptable to the constituency, in order that other evils may be prevented, which might be a great deal worse. It will be perceived that the nine hundred offices already referred to, are generally distributed by the irresponsible official party in such a way as to buy their peace or to strengthen their influence in the country. Let us see how this operates in practice. Suppose a county sends to the Assembly four representatives, all of whom support the local government; the patronage of that county is of course at their disposal, to strengthen their hands, and to keep down all opposition; but should the whole be hostile to the compact, then it is used to foster opposition and create a party to displace them. If there is a division of sentiment among the members, those who support are always aided in mortifying and getting rid of those who attack the Government. Though but one of the four is an adherent of the compact, every man in the county knows, that his influence is worth much more than that of the other three; that, while one can obtain any favour that he wants for a friend or partisan, the others cannot, unless by the barter of a corrupt vote or the sacrifice of principle, even obtain justice. Now, if besides these nine hundred offices, about five hundred commissions for the expenditure of the surplus revenues of the country upon roads, bridges and internal improvements, were given over to be disposed of in the same way, the hands of the compact would be so much strengthened that it would be still more easy to create a party in a county, to endanger the seat of any member who ventured to give an independent vote. To obviate this risk, which was seen at an early period to menace the independence of the Commons, it was determined that the members from each county should recommend the commissioners for the expenditure of moneys within it; and this, being acquiesced in by the Governors for some time before its political bearing was much regarded by the compact, has grown into usage which they have not ventured openly to attack; although, as they still contend that the right of appointment is in the Executive they seldom fail to show their power and vent their feelings, by petty alterations almost every year. The advantages of this arrangement are that the majority of the constituency—and not the minority, as in every other case—distribute the patronage under this branch of expenditure; and, as the members who name commissioners have a great deal of local knowledge, and are, moreover, responsible to the people, they can be called to account if they abuse this trust. But still, from the very nature of things, it is liable to abuse. Road commissions may be multiplied and sums unwisely expended to secure votes at the next election; or to reward, not a good road maker but a zealous partisan. The Executive has not the control it would have if these men were selected by the Government; and the legislative power, which should be used to unmask corruption, is sometimes abused to afford it shelter. The remedy which our compacts always suggest, like all their remedies for political discrepancies, aims at the extension of their own influence and the firmer establishment of their own power. They are loud, upon all occasions, in denouncing the corruption of the road system. The minority in the Assembly are eloquent on the same theme; while, through the columns of some newspaper in their pay, they are always pouring forth complaints, that the roads are wretchedly bad and that they will never be better until the expenditure is placed in their hands. It will be perceived, however, that to follow their advice, would be to make what is admitted on all hands to have its evils, a great deal worse; because, if these nominations are taken from those who posesss local information, and given to men who have little or none, who will not be advised by those who have, and who can be called to account by no power known to the Constitution;—besides a great deal more of blundering being the result, the partial responsibility, which now makes the system barely tolerable, would be entirely removed. Political partisans would still be rewarded; but, instead of all parties in the country sharing the patronage (for members of the minority, as well as of the majority, make these appointments), it would be confined only to those who supported the compact; and who, however imbecile, ignorant or corrupt, would then be, as every other officer in the Colony is now, independent of any description

of public control. If any doubt could be entertained as to whether the public would lose or gain by the change, evidence enough might be gathered; for some of the vilest jobs and most flagrant cases of mismanagement that disgrace the history of the road service in Nova Scotia, have been left as monuments of the ignorance or folly of the compact, whenever they have taken these matters into their own hands.

But, make the Governor's advisers responsible to the Assembly, and the representatives would at once resign to them the management of such affairs. It would then be the business of the Executive, instead of leaving the road service to the extemporaneous zeal or corrupt management of individuals, to come prepared, at the commencement of each session, with a general review of the whole system; and, supported by its majority, to suggest and carry a comprehensive and intelligible scheme, embracing the whole of this service, accounting for the previous year's expenditure and appointments, and accepting the suggestions of members as to the plans of the current year. We should then have an Executive to which every commissioner would be directly accountable; to which he could apply for instructions from January to December; and which, being itself responsible, would be careful of its proceedings; and yet, being more independent than individual members are in dealing with their own constituents, would be more firm and unyielding where it was right. This is the simple, and I am satisfied the only safe remedy for the abuses of the road system. To take the distribution of commissions from fifty men, possessed of much local knowledge and partially responsible, to give it to twelve others having less information and subject to no control, would be an act of madness. Fortunately, in this, as in all other cases, we have no occasion to seek for new theories, or try unsafe experiments; let us adopt the good old practices of our ancestors and of our brethren; let us "keep the old paths," in which, while there is much facility, there is no danger.

My Lord, there is an argument used against the introduction of Executive responsibility, by Sir Francis Head, which it may be well to notice, because it has been caught up by shallow thinkers everywhere, and is often urged with an air of triumph, that, to those who look beyond the surface, is somewhat ridiculous. It is said, that if this principle had been in operation, Papineau and Mackenzie would have been ministers in the respective Provinces they disturbed! But, do those who urge this objection ever stay to inquire whether, if there had been responsibility in the Canadas, either of these men could have assumed so much consequence as to be able to obstruct the operations of Government and to create a rebellion in a British Province? Nothing made a dictator tolerable in ancient Rome but a sense of common danger arising out of some unusual and disastrous posture of affairs, which rendered it necessary to confide to an individual extraordinary powers—to raise one man far above all others of his own rank—to substitute his will for the ordinary routine of administration, and to make the words of his mouth the laws of the land. When the danger passed away, the dictator passed away with it. Power, no longer combined in one mighty stream, the eccentric violence of which, though useful might be destructive, was distributed over the surface of society, and flowed again through a thousand small but well-established channels, everywhere stimulating and refreshing, but nowhere exciting alarm. In political warfare, this practice of the ancients has been followed by the moderns with good success. O'Connell in Ireland, and Papineau and Mackenzie in Canada grew into importance, from the apparent necessity which existed for large masses of men to bestow upon individuals unlimited confidence, and invest them with extraordinary powers. I wish that the two latter, instead of provoking the maddest rebellions on record, had possessed the sound sense and consummate prudence which have marked every important step in the former's extraordinary career. But, who believes, that if Ireland had had "justice" instead of having it to seek, that ever such a political phenomenon as the great agitator would have appeared to challenge our admiration and smite the oppressors with dismay? And who dreams that, but for the wretched system upheld in all the Colonies, and the entire absence of responsibility, by which faction or intrigue were made the only roads to power, either of the Canadian demagogues would ever have had an inducement, or been placed in a position to disturb the public peace? I grant that even under the forms that I recommend, such men as Papineau and Mackenzie might have existed; that they might have become conspicuous and influential; and that it

is by no means improbable that they would have been Executive Councillors of their respective Provinces, advising the Governors and presiding over the administration of their internal affairs. But suppose they had; would not even this have been better than two rebellions—the scenes at Windsor, St. Charles and St. Eustache—the frontier atrocities—and the expenditure of three million sterling, which will be the cost before the accounts are closed? Does any man in his senses believe, if Mackenzie or Bidwell could have guided the internal policy and dispensed the local patronage according to the British mode, that either of them would have been so mad as to dream of turning Upper Canada into a Republic; when, even if they succeeded, they could only hope to be Governors for a few years, with powers very much more restricted and salaries not more ample than were theirs for life or as long as they preserved their majority? Possessed of honours and substantial power, (not made to feel that they who could most effectually serve the Crown, were excluded by a false system from its favour, that others less richly endowed might rise upon their ruins), would these men have madly rushed into rebellion with the chances before them of expatriation or of an ignominious death?

You well know, my Lord, that rebels have become exceedingly scarce at home, since the system of letting the majority govern has become firmly established; and yet they were as plentiful as blackberries in the good old times, when the sovereigns contended, as Sir Francis Head did lately, that they only were responsible. Turn back and you will find that they began to disappear altogether in England about 1688, and that every political change that makes the Executive more completely responsible to the Legislature and the Legislature to the country at large, renders the prospects of a new growth, "small by degrees and beautifully less." And yet, my Lord, who can assure us, that if the sovereigns had continued, as of old, alone responsible; if hundreds of able men all running the same course of honourable ambition, had not been encouraged to watch and control each other; and if the system of governing by the minority and not by the majority, and of excluding from power all who did not admire the mode, and quarrelled with the court, had existed down to the present day;—who, I ask, will assure us, that Chatham and Fox, instead of being able ministers and loyal men, might not have been sturdy rebels? Who can say that even your Lordship, possessed of the strong attachment to liberty which distinguishes your family, might not,—despairing of all good government under such a system,—instead of using your influence to extend by peaceful improvements the happiness of the people,—be at this moment in the field at their head and struggling, sword in hand, to abate the power of the Crown? So long as the irresponsibility principle was maintained in Scotland, and the viceroys and a few bishops and courtiers engrossed the administration, there were such men as Hume and Lindsay, and such things as assemblies in Glasgow, general tables in Edinburgh, and armed men in every part of that noble country, weakening the Government, and resisting the power of the Crown; and up to the period when Lord Normanby assumed the government of Ireland and it became a principle of administration that the minority were no longer to control the majority and shut them out from all the walks of honourable ambition, what was the attitude in which Mr. O'Connell stood towards the Sovereign? Was it not one of continual menace and hostility, by which the latter was degraded and the former clothed with a dangerous importance? And what is his attitude now? Is it not that of a warm-hearted supporter of the Queen, whose smiles are no longer confined to a faction but shed over a nation, every man of which feels that he is free to obtain, if he has the ability and the good fortune to deserve, the highest honours in her power to bestow? Daniel O'Connell (and perhaps it may be said that his tail suggested a comparison) is no longer a political comet blazing towards the zenith and filling the terror-stricken beholders with apprehensions of danger and a sense of coming change; but a brilliant planet revolving in an orbit with the extent of which all are familiar, and reflecting back to the source of light and honour the beams which it is proud to share. Who any longer believes that O'Connell is to shake the empire and overturn the throne? And who doubts, had he despaired of justice, but he too might have been a rebel; and that the continued application to Ireland of the principles I denounce, would have revived the scenes and sufferings through which she passed in 1798?

If, my Lord, in every one of the three great kingdoms from which the population of British America derive their origin, the evils of which we complain were

experienced and continued until the principles we claim as our birthright became firmly established, is it to be expected that we shall not endeavour to rid ourselves, by respectful argument and remonstrance, of what cost you open and violent resistance to put down? Can an Englishman, an Irishman or a Scotchman, be made to believe, by passing a month upon the sea, that the most stirring periods of his history are but a cheat and a delusion; that the scenes which he has been accustomed to tread with deep emotions are but mementoes of the folly, and not, as he once fondly believed, of the wisdom and courage of his ancestors; that the principles of civil liberty, which from childhood he has been taught to cherish and to protect by forms of stringent responsibility, must, with the new light breaking in upon him on this side of the Atlantic, be cast aside as useless incumbrance? No, my Lord, it is madness to suppose that these men, so remarkable for carrying their national characteristics into every part of the world where they penetrate, shall lose the most honourable of them all, merely by passing from one part of the empire to another. Nor is it to be supposed that the Nova Scotians, New Brunswickers and Canadians—a race sprung from the generous admixture of the blood of the three foremost nations of the world—proud of their parentage and not unworthy of it, to whom every stirring period of British and Irish history, every great principle which they teach, every phrase of freedom to be gleaned from them, are as familiar as household words, can be in haste to forget what they learnt upon their parents' knees; what those they loved and honoured clung to with so much pride, and regarded as beyond all price. Those who expect them thus to belie their origin, or to disgrace it, may as soon hope to see the streams turn back upon their fountains. My Lord, my countrymen feel, as they have a right to feel, that the Atlantic, the great highway of communication with their brethren at home, should be no barrier to shut out the civil privileges and political rights, which more than anything else, make them proud of the connection; and they feel also, that there is nothing in their present position or their past conduct to warrant such exclusion. Whatever impression may have been made by the wholesome satire[1] wherewith one of my countrymen has endeavoured to excite the others to still greater exertions; those who fancy that Nova Scotians are an inferior race to those who dwell upon the ancient homestead or that they will be contented with a less degree of freedom, know little of them. A country that a century ago was but a wilderness and is now studded with towns and villages, and intersected with roads, even though more might have been done under a better system, affords some evidence of industry. Nova Scotian ships, bearing the British flag into every quarter of the globe, are some proofs of enterprise; and the success of the native author, to whom I have alluded, in the wide field of intellectual competition, more than contradicts the humorous exaggeration by which, while we are stimulated to higher efforts, others may be for a moment misled. If then our right to inherit the Constitution be clear; if our capacity to maintain and enjoy it cannot be questioned; have we done anything to justify the alienation of our birthright? Many of the original settlers of this Province emigrated from the old Colonies when they were in a state of rebellion—not because they did not love freedom, but because they loved it under the old banner and the old forms; and many of their descendants have shed their blood, on land and sea, to defend the honour of the crown and the integrity of the empire. On some of the hardest fought fields of the Peninsula, my countrymen died in the front rank, with their faces to the foe. The proudest naval trophy [2] of the last American war was brought by a Nova Scotian into the harbour of his native town; and the blood that flowed from Nelson's death wound in the cockpit of the *Victory* mingled with that of a Nova Scotian stripling [3] beside him struck down in the same glorious fight. Am I not then justified, my Lord, in claiming for my countrymen that Constitution, which can be withheld from them by no plea but one unworthy of a British statesman—the tyrant's plea of power? I know that I am; and I feel also, that this is not the race that can be hoodwinked with sophistry, or made to submit to injustice without complaint. All suspicion of disloyalty we cast aside, as the product of ignorance or cupidity; we seek for nothing more than British subjects are entitled to; but we will be contented with nothing less.

[1] *Sam Slick* by Judge Haliburton (see Chittick, *Thomas C. Haliburton*, Columbia University Press, 1924).

[2] The American frigate *Chesapeake*, captured off Boston by the *Shannon*, was brought into Halifax on June 6, 1813, by lieutenant, afterwards admiral sir Provo Wallis, a native of Nova Scotia.

[3] Midshipman G. A. Westphal.

My Lord, it has been said, that if this system of responsibility were established, it would lead to a constant struggle for office and influence, which would be injurious to the habits of our population and corrupt the integrity of the public men. That it would lead to the former I admit; but that the latter would be a consequence I must take leave to deny, until it can be shown, that in any of the other employments of life, fair competition has that effect. Let the bar become the bar only of the minority, and how long would there be honour and safety in the profession? Let the rich prizes to be won in commerce and finance be confined to a mere fragment, instead of being open to the whole population; and I doubt whether the same benefits, the same integrity, or the same satisfaction would grace the monopoly, that now spring from an open, fair and manly competition, by which, while individuals prosper, wealth and prosperity are gathered to the State. To be satisfied that this fair competition can with safety and the greatest advantage be carried into public as well as into private affairs, it is only necessary to contrast the example of England with that of any Continental nation where the opposite system has been pursued. And if, in England, the struggle for influence and office has curbed corruption and produced examples of consistency and an adherence to principle extremely rare in other countries, and in none more so than in the Colonies, where the course pursued strikes at the very root of manly independence, why should we apprehend danger from its introduction or shrink from the peaceful rivalry it may occasion? But, my Lord, there is another view that ought to be taken of this question. Ought not British statesmen to ask themselves, is it wise to leave a million and a half of people, virtually excluded from all participation in the honourable prizes of public life? There is not a weaver's apprentice or a parish orphan in England, that does not feel that he may, if he has the talent, rise through every grade of office, municipal and national, to hold the reins of government and influence the destinies of a mighty empire. The Queen may be hostile, the Lords may chafe, but neither can prevent that weaver's apprentice or that parish orphan from becoming Prime Minister of England. Then look at the United States, in which the son of a mechanic in the smallest town, of a squatter in the wildest forest, may contend, on equal terms, with the proudest, for any office in twenty-eight different States; and having won as many as content him, may rise, through the national grades, to be President of the Union. There are no family compacts to exclude these aspirants; no little knot of irresponsible and self-elected councillors, to whom it is necessary to sell their principles, and before whom the manliness of their nature must be prostrated, before they can advance. But, in the Colonies, where there are no prizes so splendid as these, is it wise or just to narrow the field and confine to little cliques of irresponsible politicians, what prizes there are? No, my Lord, it is neither just nor wise. Every poor boy in Nova Scotia (for we have the feelings of pride and ambition common to our nature) knows that he has the same right to the honours and emoluments of office as he would have if he lived in Britain or the United States; and he feels, that while the great honours of the empire are almost beyond his reach, he ought to have a chance of dispensing the patronage and guiding the administration of his native country without any sacrifice of principle or diminution of self-respect.

My Lord, I have done. If what has been written corrects any error into which your Lordship or others may have fallen, and communicates to some, either in Britain or the Colonies, information upon a subject not generally understood, I shall be amply repaid. Your Lordship will perhaps pardon me for reminding you, that, in thus eschewing the anonymous and putting my name to an argument in favour of Executive responsibility for the North American colonies, I am acting under a sense of deep responsibility myself. I well know that there is not a press in the pay of any of the family compacts, that will not misrepresent my motives and pervert my language; that there is not an over-paid and irresponsible official, from Fundy to the Ottawa, whose inextinguishable hostility I shall not have earned for the remainder of my life. The example of your Lordship will, however, help me to bear these burdens with patience. You have lived and prospered, and done the State good service, and yet thousands of corrupt boroughmongers and irresponsible corporators formerly misrepresented and hated you. Should I live to see the principles for which I contend, operating as beneficially over British North America, as those immortal acts, which provoked your Lordship's enemies, do in the mother country, I shall be gratified by the reflection, that the patriotic and honourable men now contending for the

principles of the British Constitution, and by whose side, as an humble auxiliary, I am proud to take my stand, whatever they may have suffered in the struggle, did not labour in vain.—I have the honour to be, with the highest respect, your Lordship's humble admirer, and most obedient servant,

JOSEPH HOWE.

## CX

## AN ACT TO AMEND AN ACT OF THE LAST SESSION OF PARLIAMENT FOR MAKING TEMPORARY PROVISION FOR THE GOVERNMENT OF LOWER CANADA [1]

(2 & 3 Victoria, c. 53.)

17th August, 1839.

31 Geo. III, cap. 31.

Whereas, an Act was passed in the thirty-first year of the reign of his Majesty, King George the Third, intituled "An Act[2] to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province," whereby among other things it was enacted that there should be within each of the Provinces of Upper Canada and Lower Canada respectively a Legislative Council and an Assembly, to be constituted in manner therein described, and with such powers and authorities as therein mentioned: And whereas an Act was passed in the last session of Parliament, intituled "An Act[3] to make temporary Provision for the Government of Lower Canada," whereby it was enacted that from the proclamation of the Act until the first day of November one thousand eight hundred and forty so much of the said Act of the thirty-first year of the reign of his Majesty, King George the Third, and of any other Act or Acts of Parliament, as provides for the Constitution or calling of a Legislative Council or Assembly for the Province of Lower Canada, or confers any powers or functions upon them or either of them should cease; and by the said Act now in recital provision is made in the meantime for the appointment by his Majesty of a Special Council for the affairs of Lower Canada, and for the making of laws or ordinances for the Government of the said Province by the Governor thereof, with the advice and consent of the majority of the Councillors present at any meeting of the Council: And whereas it is expedient that some of the provisions contained in the said lastly-recited Act should be altered: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the number of Councillors forming the Special Council in manner provided by the said Act passed in the last session of Parliament shall not be less than twenty, and that no business shall be transacted at any meeting of the said Special Council at which there are not present at least eleven Councillors.

The Special Council to consist of not less than twenty members, and no business to be transacted unless eleven be present.

II. And be it enacted that from and immediately after the passing of this Act so much of the said recited Act passed in the last Session of Parliament as provides that no law or ordinance made by the Governor of the said Province of Lower Canada, with such advice and consent as therein mentioned, shall continue in force beyond the first day of November, one thousand eight hundred and forty-two, unless continued by competent authority, shall be and the same is hereby repealed: Provided always that every law or ordinance which by the terms and provisions thereof shall be made to continue in force after the said first day of November, one thousand eight hundred and forty-two, shall be laid before both Houses of Parliament within thirty days after a copy thereof shall be received by one of her Majesty's Principal Secretaries of States, under the provisions of the said Act of the last Session of Parliament, if Parliament shall be then sitting, or otherwise within thirty days after the then next meeting of Parliament; and no such law or ordinance shall be confirmed or declared to be left to its operation by her Majesty until such law or ordinance shall first have been laid for thirty days before both Houses of Parliament, or in case either House of Parliament shall, within the said thirty days, address her Majesty to disallow any such law or ordinance.

Repeal of provision of 1 and 2 Vict., cap. 9, preventing the making of permanent laws; but all permanent laws to be laid for thirty days before Parliament previous to being confirmed.

[1] This act was passed after the act of union was withdrawn in 1839 (see No. CXI, note), pending Poulett Thomson's report on Canadian affairs.

[2] No. LIV. [3] No. XCVI.

III. And be it enacted that from and immediately after the passing of this Act so much of the said recited Act passed in the last Session of Parliament as provides that it shall not be lawful, by any such law or ordinance as therein mentioned to impose any tax, duty, rate, or impost, save only in so far as any tax, duty, rate, or impost, which at the passing of that Act was payable within the said Province of Lower Canada, might be continued, shall be and the same is hereby repealed: Provided always that it shall not be lawful for the said Governor with such advice and consent as aforesaid, to make any law or ordinance imposing, or authorizing the imposition of any new tax, duty, rate, or impost, except for carrying into effect local improvements within the said Province of Lower Canada, or any district or other local division thereof, or for the establishment or maintenance of police, or other objects of municipal government, within any city or town or district or other local division of the said Province: Provided also that in every law or ordinance imposing or authorizing the imposition of any such new tax, duty, rate, or impost, provision shall be made for the levying, receipt, and appropriation thereof by such person or persons as shall be thereby appointed or designated for that purpose, but that no such new tax, rate, duty, or impost shall be levied by or made payable to the Receiver-General or any other public officer employed in the receipt of her Majesty's ordinary revenue in the said Province; nor shall any such law or ordinance as aforesaid provide for the appropriation of any such new tax, duty, rate or impost by the said Governor, either with or without the advice of the Executive Council of the said Province, or by the Commissioners of her Majesty's treasury, or by any other officer of the Crown employed in the receipt of her Majesty's ordinary revenue.

Repeal of the provision of 1 and 2 Vict., cap. 9, prohibiting taxation; but no new tax to be levied except for public works and objects of municipal government; and such taxes not to be appropriated by Government.

IV. And be it enacted that from and after the passing of this Act so much of the said recited Act passed in the last session of Parliament as provides that it shall not be lawful for any such law or ordinance as therein mentioned to repeal, suspend, or alter any provision of any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom, or of any Act of the Legislature of Lower Canada, as then constituted, repealing or altering any such Act of Parliament, shall be and the same is hereby repealed: Provided always, that it shall not be lawful for the said Governor, with such advice and consent as aforesaid, to make any law or ordinance altering or affecting the Temporal or Spiritual rights of the Clergy of the United Church of England and Ireland, or of the Ministers of any other religious communion, or altering or affecting the tenure of land within the said Province of Lower Canada, or any part thereof, save so far as the tenure of land may be altered or affected by any law or ordinance which may be made by the said Governor, with such advice and consent as aforesaid, to provide for the extinction of any Seignorial rights and dues now vested in or claimed by the Ecclesiastics of the Seminary of Saint Sulpice at Montreal within the said Province, or to provide for the extinction of any Seignorial rights and dues vested in or claimed by any other person or persons or body or bodies corporate or politic, within the Island of Montreal, or the island called Isle Jesus, within the said Province.

Repeal of the provisions of 1 and 2 Vict., cap. 9, prohibiting the alteration of Acts of Parliament; but no law to be made affecting the Temporal or Spiritual rights of Ecclesiastics, or the law of tenure.

V. And be it enacted that every law or ordinance to be made by the said Governor, with such advice and consent as aforesaid, shall, before the passing or enactment thereof, be published at length in the public Gazette of the said Province of Lower Canada.

Laws, etc., to be published in *Gazette*.

VI. And be it enacted that for the purposes of this Act the person authorized to execute the Commission of Governor of the Province of Lower Canada shall be taken to be the Governor thereof.

Definition of Governor.

VII. And be it enacted that this Act may be amended or repealed by any Act to be passed during the present session of Parliament.

Act may be amended, etc.

## CXI

## LORD JOHN RUSSELL TO THE RIGHT HON. C. POULETT THOMSON [1]

[Trans.: *Imperial Blue Books relating to Canada*, vol. xiii.]

Downing Street,
7th September, 1839.

Sir,—The Queen having been pleased to confide to you the Government of the British provinces in North America, I now transmit to you the various Commissions under the Great Seal, which authorize you to assume and execute that office. The intimate knowledge which, as one of Her Majesty's confidential advisers, you have acquired, of the progress of Canadian affairs during the last few years, and of the views of Her Majesty's Government on that subject, relieves me from the necessity of entering on various explanations, which it would otherwise have been my duty to afford you. But it is fit that I should on the present occasion record for your guidance the intentions of the Ministers of the Crown on the principal topics of Canadian policy, on which you will be called, as the governor of those provinces, to co-operate with them.

The Bill introduced into the House of Commons during the present session of Parliament, embodied, as you are aware, the results of deliberate reflection on the various suggestions contained in the reports of the Earl of Durham. The hope of passing that measure into a law before the Parliamentary recess was defeated by various circumstances which occurred, and especially by the intelligence which, in the commencement of the month of June reached us from the Lieutenant-Governor of Upper Canada, of the state of public opinion in that colony, as expressed by the resolutions of the Council and Assembly. We have never concealed from ourselves that the success of any plan for the settlement of Canadian affairs must depend on the concurrence and support of the provinces themselves. To learn their deliberate wishes, and to obtain their co-operation by frank and unreserved personal intercourse, will therefore be the first and most important of the duties which you will be called upon to perform.

In our anxiety thus to consult, and as far as may be possible, to defer to public opinion in the Canadas on the subject of constitutional changes, Her Majesty's Government must be understood as entertaining a very strong conviction in favour of the policy of the measure which they have proposed for the adoption of Parliament. Attaching minor importance to the subordinate details of that Bill, we have found no sufficient reason for distrusting the principles on which it proceeds. These are—a legislative Union of the two provinces—a just regard to the claims of either province in adjusting the terms of that Union—the maintenance of the three estates of the provincial legislature, the settlement of a permanent civil list for securing the independence of the judges, and to the executive government that freedom of action which is necessary for the public good—and the establishment of a system of local government by representative bodies, freely elected in the various cities and rural districts. From any of these principles Her Majesty's Government would be most reluctant to recede. After a full investigation of every other plan which has been suggested they have not been able to discover in any but this, the reasonable hope of a satisfactory settlement. It will, therefore, be your first duty to endeavour to obtain for that measure, such an assent in its general principles, and such a correction of its details, as may render it acceptable to the provinces, and productive of permanent advantage. There are various modes by which this object may be accomplished, and in giving an outline of them, Her Majesty has commanded me to express to you her reliance upon your judgment, to be formed upon the spot, as to the employment of such as may be most conducive to the contentment and advantage of her Canadian subjects.

[1] The union of the two provinces was decided on as a result of Durham's *Report*. In 1839 a bill for that purpose was introduced, but withdrawn by the government, owing to protest from Upper Canada. It can be read in *Public Bills*, 1839, vol. i. The new governor-general, Charles Poulett Thomson, afterwards Lord Sydenham, was instructed to gather further information on Canadian affairs and to forward it to England. He landed at Quebec October 19, 1839, and his work in Canada is illustrated in the following documents, which also throw light on the growing changes in British colonial policy. For Sydenham's rule in Canada see Shortt, *Lord Sydenham* (Oxford, 1926).

1. You may appoint, by authority of the executive, a certain number of persons of weight and experience, selected from each province, to frame articles of Union, to be afterwards proposed to the legislature of Upper Canada.

2. You may assemble the legislature of Upper Canada, and propose to them the appointment of a certain number of Commissioners, to confer with others named by the special Council of Lower Canada.

3. If you find that your overtures to the assembly of Upper Canada are not met in a fair, conciliatory, and reasonable spirit, you may proceed to dissolve the present assembly, and appeal to the sense of the inhabitants of the Province. But in the late unsettled state of the province, in the presence of repressed disaffection, with the necessity of a second dissolution before the assembly of the united province can meet—this step must not be resorted to, without the gravest deliberation.

In whatever method you may proceed, Her Majesty's Government will expect to receive from you, founded on competent authority, such a plan of representation, with a division into cities and districts, as may enable them to lay the scheme before Parliament with confidence in the data on which it has been formed, and in the justice of the general arrangement.

I will not now argue on a further supposition, viz., that from difficulty of detail, or mutual disinclination, the plan of Union may be found altogether impracticable. Should you find, after all your efforts, that such is the result, you will lose no time in communicating to me, for Her Majesty's information, the grounds of your opinion, and the nature of any alternative which may seem to you more conductive to the general good.

But above all things, it is important to avoid unnecessary delay. The discussion, which has already been protracted at the expense of so much evil, and still greater hazard to the interests of the Canadian provinces, and of this kingdom, cannot be too speedily brought to a close. Her Majesty's Government will, therefore, anxiously await the result of your inquiries as to the state of public opinion in the Canadas respecting the proposed Union, and the terms on which in your opinion it should be effected. I earnestly trust that it may be received in this country by a period sufficiently early to enable us to communicate it to Parliament at the commencement, or soon after the commencement, of the session of 1840, and then to proceed at once with such measures as may be required to meet the exigencies of the case.

The intelligence which has reached me from Upper Canada, makes it probable that you may be called upon for some explanation of the views of the Ministers of the Crown, on a question respecting which the Bill to which I have referred is necessarily silent. I allude to the nature and extent of the control which the popular branch of the united legislature will be admitted to exercise over the conduct of the executive government, and the continuance in the public service of its principal officers. But it is evidently impossible to reduce into the form of a positive enactment a constitutional principle of this nature. The importance of maintaining the utmost possible harmony between the policy of the legislature and of the executive government admits of no question, and it will of course be your anxious endeavour to call to your counsels and to employ in the public service those persons who, by their position and character, have obtained the general confidence and esteem of the inhabitants of the province.[1]

The military defence of the Canadas is another subject of common interest to both provinces, on which it is necessary that you should be apprized of the views of Her Majesty's Government. In the correspondence between Lord Glenelg and Sir John Colborne, and especially in the despatches of the latter, you will find a full discussion of the plans which have been devised for that purpose. Amongst them is a scheme for extended fortifications, to be erected and maintained at an expense, which it is not evident will be compensated by any equivalent advantage. For the present, at least, notwithstanding the deference so justly due to the opinions of that distinguished Officer, the Ministers of the Crown cannot recommend the adoption of this scehme. On the other hand, the plan suggested from this country and sanctioned by Sir John Colborne, of creating military settlements on the frontier, on the principle of veteran battalions, appears to the Ministers of the Crown as at once the most effective and the most economical plan of defence which could be pursued. Measures will be taken, with the least possible delay, for carrying it into effect; and in the meantime you will discourage

[1] Cf. No. CXX.

and prevent, as far as may be compatible with the public safety, either the augmentation, or the continuance on foot of the volunteers, or the sedentary corps, which were embodied during the last winter as a reinforcement to the regular army. On all subjects of this nature, however, you will consult Sir Richard Jackson,[1] whose judgment and military knowledge will be of the greatest service to you.

The only topic which it remains to notice, as affecting the two Canadian provinces alike, is that of raising an emigration fund from the proceeds of the sales of the Crown lands. Unfortunately, the very elaborate report communicated to me by Lord Durham on this subject, serves but to confirm, and to place in a still clearer light, the difficulties by which, as we were previously aware, the promotion of this most important object is obstructed. Such is the extent of land alienated, and so inconsiderable the proportion which still remains vested in the Crown, that the hope of rendering any effectual aid to emigration by the sale of such lands, cannot at present be reasonably entertained. The necessary preliminary to the introduction of any such system, would be the resumption of the large tracts of land held by grantees in a barren and unprofitable state. This could be effected only by the imposition of a tax on uncleared land, and by enactments for the collection of that tax, to insure the due execution of the law. In the Lower Province there exists, at the present time, no authority by which such a tax could be imposed. In the Upper Province it is hardly to be expected that, in the present state of affairs, the difficulties which encompass the subject will be effectually overcome. Amongst the benefits to be anticipated from the union of the provinces, it is not the least important that the united legislature would be able to act upon subjects of this nature with a great comparative freedom from the undue bias of local interests, and with a large view to the permanent improvement of the provinces.

Such being the principal subjects of common interest to the two provinces, to which your attention will be immediately called, I have next to notice those which will relate exclusively to the province of Lower Canada.

The Act [2] which has been passed in the last session of Parliament, in amendment of the Act of the first year of Her Majesty's reign, providing for the temporary administration of the Government of Lower Canada, will relieve you and the Special Council from many of the impediments by which your immediate predecessor has been encountered in the attempt to promote the internal interests of the province. Sir John Colborne's despatches,[3] and especially that of the 15th of March, 1839, have pointed out very clearly many objects of great public utility, which he was unable to advance, in consequence of the restrictions under which the legislative powers confided to him and to the Special Council were exercised. To these your attention will of course be given. Much as the suspension of constitutional government in Lower Canada is to be regretted, it will not be without a very considerable compensation, if, during the interval, arrangements should be maturely and wisely made for securing to the people at large the benefit of those social institutions from which, in former times, the thoughts of the local legislature were diverted, by the controversies which then agitated the provincial society.

The establishment of Municipal Institutions for the management of all local affairs, will be among the most important of the subjects to which your attention will be called. On this subject I would refer you to the report of the Earl of Durham, and the Appendix marked C., by which it is accompanied. Although the commissioners whom his Lordship appointed to investigate the question were unable, from the shortness of the time, to submit to him any conclusive recommendations respecting it, the information which they collected will prove of much advantage to you. On the importance of such institutions I need not enlarge. Your acquaintance with the system of municipal government in this country, will point out to you that there is no mode in which local affairs can be so properly administered, and that they form, at the same time, the most appropriate and effectual means of training the great body of the people to the higher branches of legislation.

The promotion of education among all classes of the people will also engage your earnest attention. On this subject I can add nothing to the information

[1] Sir Richard Downes Jackson, commander-in-chief of the forces. [2] See No. CX.

[3] These dispatches are in *Imperial Blue Books relating to Canada* and in *British Parliamentary Papers*, 1839, vol. xxxii; 1840, vol. xxxi.

afforded by the reports of the Earl of Gosford, and his colleagues, and of the Earl of Durham. It will afford Her Majesty's Government the most sincere satisfaction to co-operate with you in any measures which you may adopt for the furtherance of this important object.

In any view which can now be taken of the affairs of British North America, it is obvious that those of Upper Canada must occupy a very prominent place. I am persuaded that the zeal for the public good, and the superiority to considerations of a nature merely personal, by which the present Lieutenant-Governor has been distinguished during his long career of public service, will obviate the risk of any dissatisfaction being entertained by him, if you should find it necessary, for a time, to assume in person the administration of the government of Upper Canada, and during that period, to supersede him in the discharge of his functions. In the prosecution, therefore, of your endeavour to obtain as much agreement as possible in the plan to be hereafter submitted to the Imperial Parliament, you will not hesitate to repair to Toronto. When there, you would, of course, avail yourself of the experience which Sir George Arthur has acquired, and of the assistance which he will have both the ability and the disposition to afford you.

The first topic which will engage your attention in Upper Canada is the present financial state of the province. This has been most elaborately explained in the Lieutenant-Governor's recent despatches. Embarrassing as the immediate state of the question is, it is yet gratifying to learn from those communications, that the difficulties in which the provincial treasury is involved, originate in causes which do not affect the wealth or the ultimate resources of the province. Having undertaking great internal improvements, especially those of the Welland and Rideau canals, with inadequate resources, the works have been very imfectly completed, and the returns are absorbed in a succession of repairs, which would not have been required if the canals had been originally formed with a greater command of capital. These works having also been effected by borrowed money, the loans have been raised at a higher rate of interest than would have been required if the credit of the province had not been diminished by the absorption of its revenues in such undertakings. Further, it appears that the provincial treasury might have been recruited with no perceptible addition to the public burdens, if it had been possible to increase, to a moderate extent, the duties of import on goods introduced for consumption. But, under the combined influence of these causes, the expenditure has at length far exceeded the receipt; and some measures for reinstating the provincial treasury in a secure condition have become indispensable.

Her Majesty's Government willingly acknowledge the great advantage which will arise from extending to Upper Canada such aid as the revenue of Great Britain could afford, consistently with a due regard to the interest of this kingdom, and of the other members of the empire at large. This is, however, a subject for distinct consideration. For the present I shall confine my attention to the remedial measures adopted by the local legislature in their last session.

Of these, the first was the raising a loan by Government debentures, which was sanctioned by a Bill, entitled "An Act to afford further facilities to negotiate debentures for the completion of certain works."

This Bill was reserved for the signification of Her Majesty's pleasure, and has been confirmed by the Queen in Council.

The second financial measure of the year was the enactment of a Bill, authorizing the issue of treasury notes to the amount of £250,000 sterling, for £1 each. This Bill has also been reserved for the signification of Her Majesty's pleasure. I regret to state that Her Majesty cannot be advised to confirm it. The issue of such an amount of small inconvertible paper money, as a resource for sustaining the public credit, is not to be justified even by the present exigency of public affairs. The effect of the measure on the currency and monetary transactions of Upper Canada, and on the value of private property throughout the province, must be such as to counterbalance any advantage which could be obtained from this temporary relief. If the credit of the country can be made available to sustain for a time the transactions of the local treasury in a less hazardous and objectionable form, you will accede to any plan of that nature. It is only as a temporary expedient that any such resource will be requisite; and it is of great importance to the future welfare of the province, that the scheme devised to

meet the pressure of the passing day should not be such as to preclude the early return to a more salutary course of financial operations.

A third measure of the same general character has been adopted by the local legislature, to provide for the indemnity of the sufferers by hostile incursions from the United States. The Bill for this purpose, entitled "An Act to ascertain and provide for the payment of all just claims arising from the late rebellion and invasions of this province," has also been reserved for the signification of Her Majesty's pleasure. I fear that Her Majesty's assent to this Bill, in its present form, cannot be given. The objection is not to the measure itself, in the propriety of which Her Majesty's Government entirely concur; but we think it impossible to advise the Queen to assent to an Act, which, if so sanctioned, would, by the terms of the preamble, convey a pledge from Her Majesty that the charge of this indemnity should be ultimately borne by the British treasury. The principle involved in this declaration is of too much importance to be thus incidentally recognised, even supposing it to be right that it should be admitted at all. Neither could Her Majesty properly affirm, in so solemn a manner, her acquiescence in this claim on the revenue of this country, unless it had been previously sanctioned by Parliament,—a sanction which has not been, and which could not hitherto have been, obtained. If a similar Bill should be passed, with the omission of the preamble, you will readily concur in the enactment of it.[1]

The Legislature of Upper Canada have also passed a Bill, which has in like manner been reserved, for settling a civil list on Her Majesty in exchange for the Crown revenues of the province. It is with sincere regret that I am compelled to announce that this is also a measure from which, in its present form, the assent of the Crown must be withheld. The effect of it is to exclude from the protection of the grant the clergy, who at present derive their maintenance from the Crown revenue, and of whom the great majority have resorted to Upper Canada on the assurance that their stipends would be thus secured to them. Now as this charge has been lawfully fixed upon the Crown revenue, and as the Crown has no other resource from which it could be paid, it is impossible to accept the proposed civil list on such terms. Anxious as Her Majesty's Government are to defer to the representatives of the people of Upper Canada in all matters connected with the internal government of that province, they cannot consent to a measure which would practically involve a violation of the pledged faith of the Crown. We cannot decline the obligation of maintaining the rights of the clergy in question; and I can only express my hope that the local legislature may concur with the Ministers of the Crown as to the propriety of re-enacting this Bill, with the addition of the charge necessary for the maintenance of those rights. The burthen will cease with the lives of the present incumbents, and is now in the course of a progressive diminution.

The last of the reserved Bills of the late Session has reference to the long controverted subject of the clergy reserves. To this Bill the Royal assent could not have lawfully been given, until it had been laid for 30 days before either House of Parliament. It was not until the 15th August that I received from the Lieutenant-Governor the document necessary to enable me to fulfil the requisition of the Constitutional Act of 1791. It was, therefore, impossible that the Bill should be finally enacted by the Queen in Council until after the commencement of the Parliamentary Session of 1840. But had this difficulty not arisen, there were other motives which would have effectually prevented the acceptance of this measure by Her Majesty. Parliament delegated to the local legislature the right of appropriating the clergy reserves, and the effect of the Bill is to retransfer this duty from the local legislature to Parliament, with a particular restriction. I am advised by the law officers of the Crown that this is an unconstitutional proceeding. It is certainly unusual and inconvenient. Her Majesty cannot assume that Parliament will accept this delegated office, and if it should not be so accepted the confirmation of the Bill would be productive of serious prejudice, and of no substantial advantage. It would postpone indefinitely the settlement of a question which it much concerns the welfare of the provinces to bring to a close; besides I cannot admit that there exist in this country greater facilities than in Upper Canada for the adjustment of this controversy; on the contrary, the provincial legislature will bring to the decision of it an extent of accurate information as to the wants and general opinions of society in that country, in

[1] The legislature of Canada passed an act in its first session dealing with rebellion losses as far as the old province of Upper Canada was concerned. For Lower Canada, see No. CXLVII.

which Parliament is unavoidably deficient. For all these reasons Her Majesty will decline to give her assent to this Bill.[1]

I have thus adverted to the principal topics which will engage your attention as Governor-General of British North America, in reference to the two Canadas, omitting many minor questions which will form the subject of future correspondence, and passing by for the present all that relates to the affairs of New Brunswick, Nova Scotia, and Prince Edward Island. I reserve these for consideration hereafter.

Finally, I am commanded to direct that in all the provinces of British North America you will inculcate upon the minds of The Queen's subjects Her Majesty's fixed determination to maintain the connexion now subsisting between them and the United Kingdom, and to exercise the high authority with which She has been invested by the favour of Divine Providence, for the promotion of their happiness and the security of her dominions.

I have, etc.,
(Signed) J. Russell.

## CXII

## RUSSELL TO POULETT THOMSON

[Trans.: *Imperial Blue Books relating to Canada*, vol. xiii.]

Downing Street,
14*th October*, 1839.

Sir,

It appears from Sir George Arthur's despatches that you may encounter much difficulty in subduing the excitement which prevails on the question of what is called "Responsible Government." I have to instruct you, however, to refuse any explanation which may be construed to imply an acquiescence in the petitions and addresses upon this subject. I cannot better commence this despatch than by a reference to the resolutions of both houses of Parliament, of the 28th April and 9th May, in the year 1837.

The Assembly of Lower Canada having repeatedly pressed this point, Her Majesty's confidential advisers at that period thought it necessary not only to explain their views in the communications of the Secretary of State, but expressly called for the opinion of Parliament on the subject. The Crown and the two houses of Lords and Commons having thus decisively pronounced a judgment upon the question, you will consider yourself precluded from entertaining any proposition on the subject.

It does not appear, indeed, that any very definite meaning is generally agreed upon by those who call themselves the advocates of this principle, but its very vagueness is a source of delusion, and if at all encouraged, would prove the cause of embarrassment and danger.

The constitution of England, after long struggles and alternate success, has settled into a form of government in which the prerogative of the Crown is undisputed, but is never exercised without advice. Hence the exercise only is questioned, and however the use of the authority may be condemned, the authority itself remains untouched.

This is the practical solution of a great problem, the result of a contest which from 1640 to 1690 shook the monarchy, and disturbed the peace of the country.

But if we seek to apply such a practice to a colony, we shall at once find ourselves at fault. The power for which a minister is responsible in England, is not his own power, but the power of the Crown, of which he is for the time the organ. It is obvious that the executive councillor of a colony is in a situation totally different. The Governor under whom he serves receives his orders from the Crown of England. But can the colonial council be the advisers of the Crown of England? Evidently not, for the Crown has other advisers, for the same functions, and with superior authority.

It may happen, therefore, that the Governor receives at one and the same time instructions from the Queen, and advice from his executive council, totally at variance with each other. If he is to obey his instructions from England,

[1] In 1853 the British parliament recognized that the parliament of Canada had the right to settle the question of the clergy reserves, provided that respect was given to all vested interests. In 1854 the Canadian parliament finally dealt with the problem by legislation (see No. CLVI).

the parallel of constitutional responsibility entirely fails; if, on the other hand, he is to follow the advice of his council, he is no longer a subordinate officer, but an independent sovereign.

There are some cases in which the force of these objections is so manifest, that those who at first made no distinction between the constitution of the United Kingdom, and that of the colonies, admit their strength. I allude to the questions of foreign war, and international relations, whether of trade or diplomacy. It is now said that internal government is alone intended.

But there are some cases of internal government, in which the honour of the Crown or the faith of Parliament, or the safety of the state, are so seriously involved, that it would not be possible for Her Majesty to delegate her authority to a ministry in a colony.

I will put for illustration some of the cases which have occurred in that very province where the petition for a responsible executive first arose—I mean Lower Canada.

During the time when a large majority of the assembly of Lower Canada followed M. Papineau as their leader, it was obviously the aim of that gentleman to discourage all who did their duty to the Crown within the province, and to deter all who should resort to Canada with British habits and feelings from without. I need not say that it would have been impossible for any minister to support, in the Parliament of the United Kingdom, the measures which a ministry, headed by M. Papineau, would have imposed upon the Governor of Lower Canada; British officers punished for doing their duty; British emigrants defrauded of their property; British merchants discouraged in their lawful pursuits—would have loudly appealed to Parliament against the Canadian ministry, and would have demanded protection.

Let us suppose the Assembly as then constituted, to have been sitting when Sir John Colborne suspended two of the judges. Would any councillor, possessing the confidence of the Assembly, have made himself responsible for such an act? And yet the very safety of the province depended on its adoption. Nay, the very orders of which your Excellency is yourself the bearer, respecting Messrs. Bedard and Panet, would never be adopted, or put in execution by a ministry depending for existence on a majority led by M. Papineau.

Nor can anyone take upon himself to say that such cases will not again occur. The principle once sanctioned, no one can say how soon its application might be dangerous, or even dishonourable, while all will agree that to recall the power thus conceded would be impossible.

While I thus see insuperable objections to the adoption of the principle as it has been stated, I see little or none to the practical views of colonial government recommended by Lord Durham, as I understand them. The Queen's Government have no desire to thwart the representative assemblies of British North America in their measures of reform and improvement. They have no wish to make those provinces the resource for patronage at home. They are earnestly intent on giving to the talent and character of leading persons in the colonies, advantages similar to those which talent and character, employed in the public service, obtain in the United Kingdom. Her Majesty has no desire to maintain any system of policy among her North American subjects which opinion condemns. In receiving the Queen's commands, therefore, to protest against any declaration at variance with the honour of the Crown, and the unity of the empire, you are at the same time instructed to announce Her Majesty's gracious intention to look to the affectionate attachment of her people in North America, as the best security for permanent dominion.

It is necessary for this purpose that no official misconduct should be screened by Her Majesty's representative in the provinces; and that no private interests should be allowed to compete with the general good.

Your Excellency is fully in possession of the principles which have guided Her Majesty's advisers on this subject; and you must be aware that there is no surer way of earning the approbation of The Queen, than by maintaining the harmony of the executive with the legislative authorities.

While I have thus cautioned you against any declaration from which dangerous consequences might hereafter flow, and instructed you as to the general line of your conduct, it may be said that I have not drawn any specific line beyond which the power of the Governor on the one hand, and the privileges of the Assembly on the other, ought not to extend. But this must be the case in any

mixed government. Every political constitution in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the Crown to the utmost extent, and the House of Commons exerting its power of the purse, to carry all its resolutions into immediate effect, would produce confusion in the country in less than a twelve-month. So in a colony: the Governor thwarting every legitimate proposition of the Assembly; and the Assembly continually recurring to its power of refusing supplies, can but disturb all political relations, embarrass trade, and retard the prosperity of the people. Each must exercise a wise moderation. The Governor must only oppose the wishes of the Assembly where the honour of the Crown, or the interests of the empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.

I have, etc.,
(Signed) J. Russell.

## CXIII

## RUSSELL TO POULETT THOMSON

[Trans.: *Imperial Blue Books relating to Canada*, vol. xiii.]

Downing Street,
16*th October*, 1839.

Sir,

I am desirous of directing your attention to the tenure on which public offices in the gift of the Crown appear to be held throughout the British Colonies. I find that the governor himself and every person serving under him are appointed during the royal pleasure, but with this important difference. The Governor's commission is, in fact, revoked whenever the interests of the public service are supposed to require such a change in the administration of local affairs. But the commissions of all other public officers are very rarely indeed recalled, except for positive misconduct. I cannot learn that during the present or the two last reigns, a single instance has occurred of a change in the subordinate colonial officers, except in cases of death or resignation, incapacity or misconduct. This system of converting a tenure at pleasure into a tenure for life, originated probably in the practice, which formerly prevailed, of selecting all the higher class of colonial functionaries from persons who, at the time of their appointment, were resident in this country; and, amongst other motives which afforded such persons a virtual security for the continued possession of their places, it was not the least considerable, that, except on those terms, they were unwilling to incur the risk and expense of transferring their residence to remote, and often to unhealthy climates. But the habit which has obtained of late years of preferring, as far as possible, for places of trust in the colonies, persons resident there, has taken away the strongest motive which could thus be alleged in favour of a practice to which there are many objections of the greatest weight. It is time, therefore, that a different course should be followed, and the object of my present communication is to announce to you the rules which will be hereafter observed on this subject in the province of Lower Canada.

You will understand, and will cause it to be made generally known, that hereafter the tenure of colonial offices held during Her Majesty's pleasure, will not be regarded as equivalent to a tenure during good behaviour; but that not only will such officers be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the governor will be considered as a sufficient reason for any alterations which his successor may deem it expedient to make in the list of public functionaries, subject of course to the future confirmation of the sovereign.

These remarks do not extend to judicial offices, nor are they meant to apply to places which are altogether ministerial, and which do not devolve upon the holders of them duties, in the right discharge of which the character and policy of the government are directly involved. They are intended to apply rather to

the heads of departments than to persons serving as clerks or in similar capacities under them. Neither do they extend to officers in the service of the Lords Commissioners of the Treasury. The functionaries who will be chiefly, though not exclusively, affected by them, are the Colonial Secretary, the Treasurer, or Receiver-General, the Surveyor-General, the Attorney and Solicitor-General, the Sheriff or Provost Marshal, and other officers, who, under different designations from these are entrusted with the same or similar duties. To this list must also be added the members of the council, especially in those colonies in which the Legislative and Executive Councils are distinct bodies.

The application of these rules to officers to be hereafter appointed will be attended with no practical difficulty. It may not be equally easy to enforce them in the case of existing officers, and especially of those who may have left this country for the express purpose of accepting the offices they at present fill. Every reasonable indulgence must be shown for the expectations which such persons have been encouraged to form. But even in these instances it will be necessary that the right of enforcing these regulations should be distinctly maintained in practice, as well as in theory, as often as the public good may clearly demand the enforcement of them. It may not be unadvisable to compensate any such officers for their disappointment, even by pecuniary grants, when it may appear unjust to dispense with their services without such an indemnity.

I have, etc.,
(Signed) J. Russell.

## CXIV

## POULETT THOMSON TO RUSSELL

[Trans.: *Imperial Blue Books relating to Canada*, 1839–40, vol. xii.]

Government House, Montreal,
18*th November*, 1839.

My Lord,

I have the honour to inform your Lordship, that having summoned the Special Council by proclamation to meet on Monday, the 11th instant, I then submitted to them the question of the re-union of the two provinces of Upper and Lower Canada, and solicited their opinion respecting it.

On Thursday, the 14th instant, I received from that body the address of which, and of my answer, I have the honour to enclose copies; and I likewise transmit an extract from the journals, from which your Lordship will learn their proceedings.

I beg your Lordship to remark, that the members composing the Special Council remain the same as during the administration of my predecessor. It may be necessary hereafter, in the exercise of my discretion, to make some alterations, with a view to increase the efficiency of that body; but I felt, that as the opinions of Her Majesty's Government in regard to the union are well known, it was extremely desirable that I should, if possible, submit the consideration of that important question to a Council in whose selection I had myself had no voice.

It appeared to me that to secure due weight in the mother country to the judgment of a body so constituted, it was indispensable to avoid even the possibility of an imputation that I had selected for its members those only whose opinions coincided with my own.

I had moreover every reason to believe, from the motives which guided my predecessor in his choice, that the Council contains a very fair representation of the state of feeling in the different districts of the province.

For these reasons I determined on making no alteration whatever; and it is with great satisfaction that I can now refer to the opinions of this body adopted almost unanimously. Their views as to the urgency of the union, and the advantages likely to result from it to the province, are set forth in their address in terms so forcible as to leave me nothing to say with reference to their opinion. But I must add, that it is my decided conviction, grounded upon such other opportunities as I have enjoyed since my arrival in this country of ascertaining the state of public feeling, that the speedy adoption of that measure by Parliament is indispensable to the future peace and prosperity of this province.

All parties look with extreme dissatisfaction at the present state of government. Those of British origin, attached by feeling and education to a constitutional form of Government, although they acquiesced at the time in the establishment of arbitrary power, as a refuge from a yet worse despotism, submit with impatience to its continuance, and regret the loss, through no fault of their own, of what they consider as their birthright. Those of the French Canadians who remained loyal to their Sovereign and true to British connexion share the same feelings. Whilst among those who are less well-affected or more easily deceived, the suspension of all constitutional rights affords to reckless and unprincipled agitators a constant topic of excitement.

All parties, therefore, without exception, demand a change. On the nature of that change there exists undoubtedly some difference of opinion.

In a country so lately convulsed, and where passions are still so much excited, extreme opinions cannot but exist; and accordingly, while some persons advocate an immediate return to the former constitution of this province, others propose either the entire exclusion from political privileges of all of French origin, or the partial dismemberment of the province, with the view of conferring on one portion a representative system, while maintaining in the other a despotism.

I have observed, however, that the advocates of these widely different opinions have generally admitted them to be their aspirations, rather than measures which could practically be adopted, and have been unable to suggest any course except the union, by which that at which they aim, namely, constitutional government for themselves, could be permanently and safely established. There exists, too, even amongst these persons, a strong and prevailing desire that the Imperial Legislature should take the settlement of Canadian affairs at once into its own hands rather than that it should be delayed by a reference to individual opinions, or to the schemes which may be put forward by different sections of local parties.

The large majority, however, of those whose opinions I have had the opportunity of learning, both of British and French origin, and of those, too, whose character and station entitle them to the greatest authority, advocate warmly the establishment of the union, and that upon terms of perfect fairness, not merely to the two provinces, but to the two races within this province. Of the extent to which this feeling, with regard to the upper province is carried, your Lordship will find a most conclusive proof in the resolution of the Special Council respecting the debt of Upper Canada. By this resolution a large sum, owing by that province on account of public works of a general nature, is proposed to be charged on the joint revenues of the United Province. Upon other details of the arrangement the same feeling prevails. It would be, however, useless for me to trouble your Lordship with respect to them, until I have had the opportunity of ascertaining the views and opinions entertained by the people of Upper Canada. If, however, as I trust, the principle of re-union should meet with their assent, I am of opinion that it can only be in consequence of demands of an unwarrantable character upon their part, that difficulty will arise in settling the principal terms.

I have, etc.,
(Signed C. Poulett Thomson.

ENCLOSURE 1

To his Excellency the Right Honourable Charles Poulett Thomson, one of Her Majesty's most Honourable Privy Council, Governor-General of British North America, and Captain-General, and Governor-in-Chief, in and over the Provinces of Lower Canada and Upper Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same.

May it please your Excellency,

We, Her Majesty's dutiful and loyal subjects, the Special Council for the affairs of Lower Canada, at a meeting convened by your Excellency, under the authority and in pursuance of the statute in this behalf provided, beg leave respectfully to return to your Excellency our thanks for your considerate care of the interests of this province, in having called our attention to Her Majesty's gracious message to both Houses of the Imperial Parliament, relative to the reunion of the provinces of Upper and Lower Canada, upon which important subject your Excellency has been pleased to desire the opinion of the Special Council.

In conformity with the desire of your Excellency, we have applied our deliberate consideration to the various complex interests and objects involved in the measure of reuniting the two provinces, and we most heartily express our humble gratitude to Her Majesty, for having granted her high sanction to a measure, which from our local knowledge and the experience we have had of the government of these provinces, and of their past and present political state, we deem to be essential to their future peace and welfare, and for the good, constitutional, and efficient government of them, under the protecting care and authority of Her Majesty, and the adoption of which we are intimately convinced has become of indispensable and urgent necessity.

In considering this contemplated measure, we have directed our attention to a few of the more prominent and important provisions, fit, as we conceive, to be embraced in it; and the views entertained by us on them, as well as on the measure itself, we have embodied in certain resolutions, which we have now the honour humbly to submit to your Excellency, as containing our opinion on the important subject, respecting which it has pleased your Excellency to consult us.

(Signed) J. STUART, Chairman.

Special Council, Montreal,
14*th November*, 1839.

ENCLOSURE II

Special Council,
*Wednesday*, 13*th November*, 1839.

Resolved—That under existing circumstances, in order to provide adequately for the peace and tranquillity, and the good, constitutional, and efficient government of the provinces of Upper and Lower Canada, the reunion of these provinces under one legislature, in the opinion of this Council, has become of indispensable and urgent necessity.

Resolved—That the declared determination of Her Majesty, conveyed in Her gracious message to Parliament to reunite the provinces of Upper and Lower Canada, is in accordance with the opinion entertained by this Council, and receives their humble and ready acquiescence.

Resolved—That among the principal enactments, which, in the opinion of this Council, ought to make part of the Imperial Act for reuniting the provinces, it is expedient and desirable that a suitable civil list should be provided for securing the independence of the judges, and maintaining the executive government in the exercise of its necessary and indispensable functions.

Resolved—That regard being had to the nature of the public debt of Upper Canada, and the objects for which principally it was contracted, namely, the improvement of internal communications, alike useful and beneficial for both provinces, it would be just and reasonable, in the opinion of this Council, that such part of said debt, as has been contracted for this object, and not for defraying expenses of a local nature, should be chargeable on the revenues of both provinces.

Resolved—That the adjustment and settlement of the terms of the reunion of the two provinces, may, in the opinion of this Council, with all confidence be submitted to the wisdom and justice of the Imperial Parliament, under the full assurance that provisions of the nature of those already mentioned, as well as such others as the measure of reunion may require, will receive due consideration.

Resolved—That in the opinion of this Council, it is most expedient with a view to the security of Her Majesty's North American provinces, and the speedy cessation of the enormous expense now incurred by the parent state for the defence of Upper and Lower Canada, that the present temporary legislature of this province should, as soon as practicable, be succeeded by a permanent legislature, in which the people of these two provinces may be adequately represented, and their constitutional rights exercised and maintained.

## CXV

## POULETT THOMSON TO A FRIEND

[Trans.: G. Poulett Scrope, *Memoir of the Life of the Rt. Honourable Charles, Lord Sydenham* (2nd edn., London, 1844.]

Toronto, November 20th and December 8th, 1839.

I have succeeded in Lower Canada in far less time and with greater ease than I could have expected from Sir John Colborne's account to me of the state of feeling, especially in his own council. The fact is, that his council ran riot, and did not know how to proceed. I have given them my opinion strongly, at the same time that I expressed my willingness to hear and give due weight to theirs. This course has shortened business (for there is a strong wish to be guided by the Home Government), and produced unanimity. So far, therefore, as the Lower Province is concerned, I look upon the Union as settled. The decision, too, I have reason to know, gives the greatest satisfaction to the Province generally, and nearly all are prepared to accept the measure, if it can be carried through Parliament, with the utmost cordiality. The fact is, that all parties there are dead-sick of the present state of things, and desire a return to Constitutional Government. Of course the extremes have their different crotchets for arriving at this end. The ultra-French desire an immediate return to the old Constitution. The ultra-British the disfranchisement of the French Canadians. But even they have been satisfied, I believe, by a little management and a good deal of firmness, that both were equally out of the question, and have now joined with the great mass who hold the middle opinion in favour of the Union measure. The "Canadien" and the "Montreal Herald" lie down together upon this point. In short, the unanimity is wonderful.

I have now the Upper Province to deal with, which will, I fear, be a more difficult matter. But I do not despair; and certainly, so far as all the real interests of the country are concerned, the Union is far more necessary to Upper Canada than to the other. If it were possible, the best thing for Lower Canada would be a despotism for ten years more; for, in truth the people are not yet fit for the higher class of self-government—scarcely indeed, at present, for any description of it; and by carrying oneself the measures which a House of Assembly will probably never carry, one might gradually fit them for both, and at all events, leave them an amount of good institutions which the United Legislature, when it came, could not destroy. But in Upper Canada the case, as it appears to me, is widely different. The state of things here is far worse than I had expected. The country is split into factions animated with the most deadly hatred to each other. The people have got into the habit of talking so much of *separation*, that they begin to believe in it. The Constitutional party is as bad or worse than the other, in spite of all their professions of loyalty. The finances are more deranged than we believed even in England. The deficit, £75,000 a year, more than equal to the income. All public works suspended. Emigration going on fast *from* the province. Every man's property worth only half what it was. When I look to the state of Government, and to the departmental administration of the province, instead of being surprised at the condition in which I find it, I am only astonished it has been endured so long. I know that, much as I dislike Yankee institutions and rule, *I* would not have fought against them, which thousands of these poor fellows, whom the Compact call rebels, did, if it were only to keep up such a Government as they got. The excitement upon "Responsible Government" is great. Not that I believe the people understand what they are clamouring for by that word; but that they feel the extreme uneasiness of their situation, owing to the financial embarrassments, and hate the dominant party in the Government with intense hatred. I do not wonder at the cry for Responsible Government, when I see how things have been managed.

Then the Assembly is such a House! Split into half a dozen different parties. The Government having *none*—and *no one man* to depend on! Think of a House in which half the members hold places, yet in which the Government does not command a single vote; in which the placemen generally vote against the Executive; and where there is no one to defend the Government when attacked, or to state the opinion or views of the Governor! How, with a popular assembly,

Government is to be conducted under such circumstances is a riddle to me. I am now more than ever satisfied that the Union affords the only chance of putting an end to the factions that distract the country; the only means of recruiting its finances by persuading Great Britain to help the Upper Canada Exchequer; the only means by which the present abominable system of government can be broken up, and a strong and powerful administration, both departmental and executive, be formed. And unless the people will assent to the general outline of it, and Parliament will then carry the details, upon which they would never agree, with a high hand, the province is lost. From all that I can hear or see, I would not give a year's purchase for our hold of it, if some great stroke is not given which shall turn men's thoughts from the channel in which they now run, and give a fresh impetus to public works, emigration, and the practical improvement of the country's resources.

It is indeed a pity to see this province in such a state. It is the finest country I ever knew, even what I have seen of it in a circle of thirty or forty miles from here; and by the accounts I receive the upper part is even superior. Lower Canada is not to be named in comparison. The climate, the soil, the water-power, and facilities of transport, finer than anything in North America.

Whether in their present state of violent excitement I shall be able to persuade the people to come to reasonable terms, I cannot venture to say; but I am sure it is the last and only chance. After having brought — and — to think that the French Canadians ought to have their full share of the representation, I shall not despair of anything. But what I hear, and have as yet seen, of the House of Assembly, is not encouraging. If they are not willing, however, I shall appeal to the people without hesitation; for the state of things admits of no delay, and no half measures.

## CXVI

## POULETT THOMSON'S MESSAGE TO LEGISLATURE OF UPPER CANADA

[Trans.: Christie, *op. cit.*, vol. v.]

December 7th, 1839.

In pursuance of the intention expressed in his speech from the throne, the Governor General desires now to bring under the consideration of the House of Assembly, the subject of the re-union of this Province with Lower Canada, recommended by Her Majesty in her gracious message to both Houses of Parliament on the third of May last.

For several years the condition of the Canadas has occupied a large portion of the attention of Parliament. That they should be contented and prosperous—that the ties which bind them to the parent state should be strengthened—that their administration should be conducted in accordance with the wishes of the people, is the ardent desire of every British statesman—and the experience of the last few years amply testifies that the Imperial Parliament has been sparing neither of the time it has devoted to the investigation of their affairs, nor of the expenditure it has sanctioned for their protection.

The events which have marked the recent history of Lower Canada, are so familiar to the House of Assembly, that it is unnecessary for the Governor General further to allude to them. There, the constitution is suspended, but the powers of the Government are inadequate to permit of the enactment of such permanent laws as are required for the benefit of the people.

Within this Province the finances are deranged—public improvements are suspended—private enterprise is checked—the tide of emigration so essential to the prosperity of the country and to the British connexion, has ceased to flow—while by many, the general system of Government is declared to be unsatisfactory.

After the most attentive and anxious consideration of the state of these Provinces, and the difficulties under which they respectively labour, Her Majesty's advisers came to the conclusion, that by their re-union alone could those difficulties be removed. During the last session of the Imperial Legislature they indeed refrained from pressing immediate legislation, but their hesitation proceeded from no doubt as to the measure or its necessity. It arose solely to

ascertain more fully the opinions of the Legislature of Upper Canada, and to collect information from which the details might be rendered more satisfactory to the people of both Provinces.

The time then is now arrived beyond which a settlement cannot be postponed. In Lower Canada it is indispensable to afford a safe and practicable return to a constitutional government, and so far as the feelings of the inhabitants can be there ascertained, the measure of the re-union meets with approbation.

In Upper Canada it is no less necessary, to enable the Province to meet her financial embarrassments, and to proceed in the development of her natural resources. There are evidently no means in this Province of fulfilling the pecuniary obligations which have been contracted, but by a great increase in the local revenues. But so long as Lower Canada remains under her present form of Government, neither Province possesses any power over the only source from which that increase can be drawn. Nor even, were it possible to restore a representative constitution to Lower Canada, unaccompanied by the union, would the position of this Province be much improved; since past experience has shown the difficulty of procuring assent to any alteration of the customs laws suggested from hence.

This Province has engaged in undertakings, which reflect the highest honour on the enterprise and industry of her inhabitants. The public works which she has completed or commenced, have been conceived in a spirit worthy of a successful result. But additional means are indispensable to avert the ruin of some, and secure the completion of others. Nor will that alone suffice; Lower Canada holds the key to all those improvements. Without her co-operation, the navigation for which nature has done so much and for which this Province has so deeply burthened itself, must remain incomplete, and a barrier be opposed to the development of those great natural resources which the hand of Providence has so lavishly bestowed on this country.

With a view to remove all those difficulties: to relieve the financial embarrassments of Upper Canada: to enable her to complete her public works and develop her agricultural capabilities: to restore constitutional government to Lower Canada: to establish a firm, impartial, and vigorous government for both; and to unite the people within them in one common feeling of attachment to British institutions and British connexion, the union is desired by Her Majesty's Government; and that measure alone, if based upon just principles, appears adequate to the occasion.

Those principles, in the opinion of Her Majesty's advisers, are, a just regard to the claims of either Province in adjusting the terms of the union—the maintenance of the three estates of the Provincial Legislature;—the settlement of a permanent civil list for securing the independence of the judges and to the executive government that freedom of action which is necessary for the public good, and the establishment of a system of local government adapted to the wants of the people.

It was with great satisfaction then that Her Majesty's Government learnt that upon the question of the union itself the House of Assembly had pronounced their decided judgment during their last session; and it will only remain for the Governor General now to invite their assent to the terms upon which it is sought to be effected. Their decision was indeed accompanied by recommendations to which the government could not agree; but the Governor General entertains no doubt that, under the altered circumstances, they will no more be renewed. It will be for the Imperial Parliament, guided by their intimate knowledge of constitutional law, and, free from the bias of local feelings and interests, to arrange the details of the measure.

The first of the terms of re-union, to which the Governor General desires the assent of the House of Assembly, is equal representation of each Province in the united legislature. Considering the amount of the population of Lower Canada, this proposition might seem to place that Province in a less favourable position than Upper Canada; but, under the circumstances in which this Province is placed, with the increasing population to be expected from immigration, and having regard to the commercial and agricultural enterprise of its inhabitants, an equal apportionment of representation appears desirable.

The second stipulation to be made is the grant of a sufficient civil list. The propriety of rendering the judicial bench independent alike of the Executive and the Legislature, and of the furnishing the means of carrying on the

indispensable services of the government admits of no question, and has been affirmed by the Parliament of Upper Canada in the acts passed by them for effecting those objects. In determining the amount of the civil list, the House of Assembly may be assured that the salaries and expenses to be paid from it will be calculated by Her Majesty's Government with a strict regard to economy and the state of the provincial finances.

Thirdly, the Governor General is prepared to recommend to Parliament, that so much of the existing debt of Upper Canada, as has been contracted for public works of a general nature, should, after the union, be charged on the joint revenue of the United Province. Adverting to the nature of the works for which this debt was contracted, and the advantage which must result from them to Lower Canada, it is not unjust that that Province should bear a proportion of their expenses.

On these principles, the Governor General is of opinion that a re-union of the two Provinces may be effected—equitable and satisfactory in its terms, and beneficial in its results to all classes. He submits them to the consideration of the House of Assembly, in the full conviction of their importance, and in the hope that they will receive the assent of that House. Fortified by the expression of their opinion, Her Majesty's Government and Parliament will be able at once to apply themselves to the full development of the scheme, and to the consideration of the provisions by which it may be carried into effect with the greatest advantage to the people of both Provinces.

If in the course of their proceedings, the House of Assembly should desire any information which it is in the power of the Governor General to afford, they will find him ready and anxious to communicate with them frankly and fully, and to aid, by all the means in his power, that settlement on which he firmly believes that the future prosperity and advancement of these Colonies mainly depend.

## CXVII

## POULETT THOMSON TO A FRIEND

[Trans.: Scrope, *op. cit.*]

December 12th, 1839.

I am not a bit afraid of the responsible government cry. I have already done much to put it down in its inadmissible sense; namely, the demand that the council shall be responsible to the assembly, and that the governor shall take their advice, and be bound by it. In fact, this demand has been made much more *for* the people than *by* them. And I have not met with anyone who has not at once admitted the absurdity of claiming to put the council over the head of the governor. It is but fair, too, to say that every thing has in past times been done by the different governors to excite the feelings of the people on this question. First, the executive council has generally been composed of the persons most obnoxious to the majority of the assembly. And next, the governor has taken extreme care to make every act of his own go forth to the public *on the responsibility* of the executive council. So the people have been carefully taught to believe that the governor is nobody, and the executive council the real power, and that by the governor himself. At the same time they have seen that power placed in the hands of their opponents. Under such a system it is not to be wondered at if our argument founded on the responsibility of the governor to the home government falls to the ground. I have told the people plainly that, as I cannot get rid of my responsibility to the home government, I will place no responsibility on the council; that they are *a council* for the governor to consult, but no more. And I have yet met with no "responsible government" man who was not satisfied with the doctrine. In fact there is no other theory which has common sense. Either the governor is the sovereign or the minister. If the first, he may have ministers, but he cannot be responsible to the government at home, and all colonial government becomes impossible. He must therefore be the minister, in which case he cannot be under the control of men in the colony.

## CXVIII

## RESOLUTIONS OF LEGISLATIVE COUNCIL OF UPPER CANADA [1]

[Trans.: *Imperial Blue Books relating to Canada*, vol. xii.]

December 14, 1839.

*Resolved*, 1—That the events which have lately marked the history of Lower Canada—the consequent necessity for a suspension of her constitution, and the inadequacy of the powers of Government existing there, for the enactment of permanent laws, such as are required for the benefit of the people, present a state of public affairs in the sister Province, deeply to be deplored by this house, as well from a disinterested anxiety for the welfare of a people so nearly connected with Upper Canada, as in consideration of the injurious consequences resulting to this community, from a continuance of the unsettled political condition of the Lower Province.

*Resolved*, 2—That the present derangement of the finances of Upper Canada—the total suspension of her public improvements—the paralysed condition of private enterprise—the cessation of immigration, and the apparent impossibility of the removal of these evils, without the united efforts of both the Canadian Provinces—make the adoption of some great measure necessary, which will restore prosperity to the Canadas, and renew confidence at home and abroad in the stability of their political institutions.

*Resolved*, 3—That considering the hopelessness arising from past experience, and from a view of the political condition of Lower Canada, of ever realizing, in separate legislatures, the unity of feeling or action in measures affecting equally the interests of both provinces, on which the prosperity or safety of either may essentially depend, a re-union of the Provinces of Upper and Lower Canada has, in the opinion of this house, become indispensable for the restoration of good government within these colonies, and for the preservation of their institutions in connexion with the parent state.

*Resolved*, 4—That for these urgent reasons, the assent of this house be expressed to the enactment of the important measure of re-union of the Provinces of Upper and Lower Canada, recommended by Her Majesty to both Houses of Parliament, and to the houses of the Provincial Legislature by His Excellency the Governor General; and that such assent, on the part of this house, be given on the following terms:

*First*—That there be an equal representation of each Province in the United Legislature.

*Secondly*—That a sufficient permanent civil list be granted to Her Majesty, to enable Her Majesty to render the judicial bench independent alike of executive power and popular influence, and to carry on the indispensable services of government.

*Thirdly*—That the public debt of this Province, contracted for public works of a general nature, shall, after the union, be charged on the joint revenue of the united Province.

*Resolved*, 5—That in yielding this ready concurrence to the measure of the re-union of the provinces, strongly recommended by Her Majesty, the Legislative Council of Upper Canada rely upon the wisdom and justice of their most gracious Sovereign, and of Her Majesty's Parliament, for devising the details of the plan of re-union, and for the establishment of such a system of government in the united Province, as will tend to the development of its natural resources, and enable it, with the blessing of Divine Providence to pursue steadily, and free from distractions by which the country has lately been divided, the course of prosperity and happiness, which the best interests of the people of Canada, and of the empire, alike require not to be longer impeded.

[1] These resolutions were carried by a 'large majority'. They were sent to England with the document which follows in an explanatory dispatch from Thomson.

## CXIX

## RESOLUTIONS OF THE HOUSE OF ASSEMBLY OF UPPER CANADA

[Trans.: *Imperial Blue Books relating to Canada,* vol. xii.]

December 23rd, 1839.

*Resolved*—That the House of Assembly, at its last session, declared that, in their opinion, a United Legislature for the Canadas, on certain terms, was indispensable, and that further delay must prove ruinous to their best interests, and that His Excellency the Governor General, by his message to this house, has announced, that with a view to remove the difficulties of these Provinces, to relieve the financial embarrassments of Upper Canada, to enable her to complete her public works, and develop her agricultural capabilities, to restore constitutional government to Lower Canada, to establish a firm, impartial, and vigorous government for both, and to unite the people within them in one common feeling of attachment to British institutions and British connexion; the legislative union of Upper and Lower Canada has been recommended by Her Majesty to the Imperial Parliament; and His Excellency the Governor General has invited the assent of this house to certain specified terms, upon which the union may be established. It, therefore, becomes the duty of the representatives of the people of this Province carefully to consider the provisions by which this measure may be carried into effect, with the greatest security to their future peace, welfare and good government, and the permanent connexion of these Colonies with the British empire.

*Resolved,*—That this house concur in the proposition that there be an equal representation of each province in the United Legislature.

*Resolved,*—That this house concur in the proposition, that a sufficient civil list be granted to Her Majesty, for securing the independence of the judges and to the Executive Government that freedom of action which is necessary for the public good. The grant for the person administering the Government, and for the Judges of the several Superior Courts to be permanent, and for the officers conducting the other departments of the public service, to be for the life of the sovereign, and for a period of not less than ten years.

*Resolved,*—That the public debt of this Province shall after the union, be charged on the joint revenue of the United Province.

## CXX

## POULETT THOMSON TO HOUSE OF ASSEMBLY OF UPPER CANADA

January 14, 1840.

[Trans.: *Legislative Assembly of Canada, Journals* (1841), App. BB.]

In answer to the address from the House of Assembly of the 13th December, respecting communications received from her Majesty's principal Secretary of State on the subject of Responsible Government, the Governor General regrets that it is not in his power to communicate to the House of Assembly the despatches upon the subject referred to.

The Governor General has received Her Majesty's commands to administer the Government of these Provinces in accordance with the well understood wishes and interests of the people, and to pay to their feelings, as expressed through their representatives, the deference that is justly due to them.[1]

These are the commands of Her Majesty, and these are the views with which Her Majesty's Government desire that the administration of these Provinces should be conducted; and it will be the earnest and anxious desire of the Governor General to discharge the trust committed to him, in accordance with these principles.

[1] On December 13, 1839, the house of assembly of Upper Canada asked Thomson for copies of Russell's dispatches on 'responsible government'. This document is the reply to that address. Thomson merely quotes the dispatch printed above (see No. CXI). On August 17, 1841, in reply to an address from the legislative assembly of Canada, he laid copies of Russell's dispatches before the house. They are printed in *Legislative Assembly of Canada, Journals* (1841), App. BB. I have collated the copies found in the *Imperial Blue Books* with those in the *Journals*.

## CXXI

## THE UNION ACT, 1840 [1]

(3 & 4 Victoria, c. 35.)

*An Act to re-unite the Provinces of Upper and Lower Canada, and for the government of Canada.*

23rd July, 1840.

Whereas it is necessary that provision be made for the good government of the Provinces of Upper and Lower Canada, in such manner as may secure the rights and liberties and promote the interests of all classes of her Majesty's subjects within the same: And whereas to this end it is expedient that the said Provinces be reunited to form one Province for the purposes of executive government and legislation: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by authority of the same, that it shall be lawful for her Majesty, with the advice of her Privy Council, to declare, or to authorize the Governor-General of the said two Provinces of Upper and Lower Canada to declare by proclamation that the said Provinces upon, from, and after a certain day in such proclamation to be appointed, which day shall be within fifteen calendar months next after the passing of this Act, shall form and be one Province under the name of the Province of Canada, and thenceforth the said Provinces shall constitute and be one Province under the name aforesaid upon, from and after the day so appointed, as aforesaid. Declaration of Union.

II. And be it enacted that so much of an Act [2] passed in the session of Parliament held in the thirty-first year of the reign of George the Third, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled 'An Act for making more effectual Provision for the Government of the Province of Quebec in North America,' and to make further Provision for the Government of the said Province," as provides for constituting and composing a Legislative Council and Assembly within each of the said Provinces respectively, and for the making of laws; and also the whole of an Act [3] passed in the session of Parliament held in the first and second years of the reign of her present Majesty, intituled "An Act to make Temporary Provision for the Government of Lower Canada;" and also the whole of an Act [4] passed in the session of Parliament held in the second and third years of the reign of her present Majesty, intituled "An Act to Amend an Act of the last Session of Parliament for making Temporary Provision for the Government of Lower Canada;" and also the whole of an Act [5] passed in the session of Parliament held in the first and second years of the reign of his late Majesty, King William the Fourth, intituled "An Act to amend an Act of the fourteenth year of His Majesty, King George the Third, for establishing a fund towards defraying the Charges of the Administration of Justice and the Support of the Civil Government in the Province of Quebec in America;" shall continue and remain in force until the day on which it shall be declared by proclamation, as aforesaid, that the said two Provinces shall constitute and be one Province as aforesaid, and shall be repealed on, from and after such day: Provided always that the repeal of the said several Acts of Parliament shall not be held to revive or give any force or effect to any enactment which has by the said Acts, or any of them, been repealed or determined. Repeal of Acts: 31 G. 3, c. 31, 1 and 2 Vict., c. 9, 2 and 3 Vic., c. 53, 1 and 2 W. 4, c. 23, 14 G. 3, c. 88.

III. And be it enacted that from and after the reunion of the said two Provinces there shall be within the Province of Canada one Legislative Council and one assembly to be severally constituted and composed in the manner hereinafter prescribed, which shall be called "The Legislative Council and Assembly of Canada;" and that within the Province of Canada her Majesty shall have power, by and with the advice and consent of the said Legislative Council and Assembly, to make laws for the peace, welfare, and good government of the Province of Composition and powers of Legislature.

[1] Poulett Thomson sent home a bill for union differing from the bill of 1839 (see note to No. CXI and cf. No. CXXII). This bill with some changes was passed July 23, 1840. The Union came into operation by a proclamation issued Feb. 5, 1841, and in the following June the first parliament of Canada met at Kingston. Sydenham died in the following September.

[2] Constitutional Act, §§ 2–23. (See No. LIV.)

[3] See No. XCVI.

[4] See No. CX.

[5] See No. LXXIX.

Canada, such laws not being repugnant to this Act, or to such parts of the said Act passed in the thirty-first year of the reign of his said late Majesty as are not hereby repealed,[1] or to any Act of Parliament made or to be made and not hereby repealed, which does or shall by express enactment or by necessary intendment extend to the Provinces of Upper and Lower Canada, or to either of them, or to the Province of Canada; and that all such laws being passed by the said Legislative Council and Assembly and assented to by her Majesty, or assented to in her Majesty's name by the Governor of the Province of Canada, shall be valid and binding to all intents and purposes within the Province of Canada.

Appointment of Legislative Councillors.[2]

IV. And be it enacted that for the purpose of composing the Legislative Council of the Province of Canada it shall be lawful for her Majesty, before the time to be appointed for the first meeting of the said Legislative Council and Assembly, by an instrument under the sign manual, to authorize the Governor in her Majesty's name, by an instrument under the Great Seal of the said Province, to summon to the said Legislative Council of the said Province such persons, being not fewer than twenty, as her Majesty shall think fit; and that it shall also be lawful for her Majesty from time to time to authorize the Governor in like manner to summon to the said Legislative Council such other person or persons as her Majesty shall think fit, and that every person who shall be so summoned shall thereby become a member of the Legislative Council of the Province of Canada: Provided always, that no person shall be summoned to the said Legislative Council of the Province of Canada who shall not be of the full age of twenty-one years, and a natural-born subject of her Majesty, or a subject of her Majesty naturalized by Act of the Parliament of Great Britain, or by Act of the Parliament of the United Kingdom of Great Britain and Ireland, or by an Act of the Legislature of either of the Provinces of Upper or Lower Canada, or by an Act of the Legislature of the Province of Canada.

Qualification of Legislative Councillors.

Tenure of office of Councillor.

V. And be it enacted that every member of the Legislative Council of the Province of Canada shall hold his seat therein for the term of his life, but subject nevertheless to the provisions hereinafter contained for vacating the same.

Resignation of Legislative Councillor.

VI. And be it enacted that it shall be lawful for any member of the Legislative Council of the Province of Canada to resign his seat in the said Legislative Council, and upon such resignation the seat of such Legislative Councillor shall become vacant.

Vacating seat by absence.

VII. And be it enacted that if any Legislative Councillor of the Province of Canada shall for two successive sessions of the Legislature of the said Province fail to give his attendance in the said Legislative Council, without the permission of her Majesty or of the Governor of the said Province signified by the said Governor to the Legislative Council, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power, or shall do, concur in, or adopt any Act whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign state or power, or shall become bankrupt, or take the benefit of any law relating to insolvent debtors, or become a public defaulter, or be attainted of treason, or be convicted of felony or of any infamous crime, his seat in such Council shall thereby become vacant.

Trial of questions.

VIII. And be it enacted that any question which shall arise respecting any vacancy in the Legislative Council of the Province of Canada, on occasion of any of the matters aforesaid, shall be referred by the Governor of the Province of Canada to the said Legislative Council, to be by the said Legislative Council heard and determined: Provided always that it shall be lawful, either for the person respecting whose seat such question shall have arisen, or for her Majesty's Attorney-General for the said Province on her Majesty's behalf, to appeal from the determination of the said Council in such case to her Majesty, and that the judgment of her Majesty, given with the advice of her Privy Council thereon, shall be final and conclusive to all intents and purposes.

Appointment of Speaker.[2]

IX. And be it enacted that the Governor of the Province of Canada shall have power and authority from time to time, by an instrument under the Great Seal of the said Province, to appoint one member of the said Legislative Council to be Speaker of the said Legislative Council, and to remove him and appoint another in his stead.

Quorum.

X. And be it enacted that the presence of at least ten members of the said Legislative Council, including the Speaker, shall be necessary to constitute a

[1] i.e. Constitutional Act of 1791. (See No. LIV.) [2] Cf. Nos. CLIX and CLX.

meeting for the exercise of its powers; and that all questions which shall arise in the said Legislative Council shall be decided by a majority of voices of the members present other than the Speaker, and when the voices shall be equal the Speaker shall have the casting vote. Division. Casting vote.

XI. And be it enacted that for the purpose of constituting the Legislative Assembly of the Province of Canada it shall be lawful for the Governor of the said Province, within the time hereinafter mentioned and thereafter from time to time as occasion shall require, in her Majesty's name and by an instrument or instruments under the Great Seal of the said Province, to summon and call together a Legislative Assembly in and for the said Province. Convoking the Assembly.

XII. And be it enacted that in the Legislative Assembly of the Province of Canada, to be constituted as aforesaid, the parts of the said Province which now constitute the Provinces of Upper and Lower Canada respectively, shall, subject to the provisions hereinafter contained, be represented by an equal number of representatives to be elected for the places and in the manner hereinafter mentioned. Representatives for each Province.

XIII. And be it enacted that the County of Halton in the Province of Upper Canada shall be divided into two ridings, to be called respectively the East Riding and the West Riding; and that the East Riding of the said County shall consist of the following townships, namely: Trafalgar, Nelson, Esquesing, Nassagaweya, East Flamborough, West Flamborough, Ering, Beverley; and that the West Riding of the said County shall consist of the following townships, namely: Garafraxa, Nichol, Woolwich, Guelph, Waterloo, Wilmot, Dumfries, Puslinch, Eramosa; and that the East Riding and West Riding of the said County shall each be represented by one member in the Legislative Assembly of the Province of Canada. County Halton.

XIV. And be it enacted that the County of Northumberland in the Province of Upper Canada shall be divided into two ridings, to be called respectively the North Riding and the South Riding; and that the North Riding of the last-mentioned County shall consist of the following townships, namely: Monaghan, Otonabee, Asphodel, Smith, Douro, Dummer, Belmont, Methuen, Burleigh, Harvey, Emily, Gore, Ennismore; and that the South Riding of the last-mentioned County shall consist of the following townships, namely: Hamilton, Haldimand, Cramak, Murray, Seymour, Percy; and the North Riding and South Riding of the last-mentioned County shall each be represented by one member in the Legislative Assembly of the Province of Canada. County of Northumberland.

XV. And be it enacted that the County of Lincoln in the Province of Upper Canada shall be divided into two ridings, to be called respectively the North Riding and the South Riding; and that the North Riding shall be formed by uniting the First Riding and Second Riding of the said County, and the South Riding by uniting the Third Riding and Fourth Riding of the said County; and that the North and South Ridings of the last-mentioned County shall each be represented by one member in the Legislative Assembly of the Province of Canada. County of Lincoln.

XVI. And be it enacted that every county and riding, other than those hereinbefore specified, which at the time of the passing of this Act was by law entitled to be represented in the Assembly of the Province of Upper Canada, shall be represented by one member in the Legislative Assembly of the Province of Canada. Other county constituency of Upper Canada.

XVII. And be it enacted that the City of Toronto shall be represented by two members, and the towns of Kingston, Brockville, Hamilton, Cornwall, Niagara, London, and Bytown shall each be represented by one member in the Legislative Assembly of the Province of Canada. Town constituency of Upper Canada.

XVIII. And be it enacted that every county which before and at the time of the passing of the said Act of Parliament,[1] intituled "An Act to make temporary provision for the Government of Lower Canada" was entitled to be represented in the Assembly of the Province of Lower Canada, except the Counties of Montmorency, Orleans, L'Assomption, La Chesnaye, L'Acadie, Laprairie, Dorchester and Beauce hereinafter mentioned, shall be represented by one member in the Legislative Assembly of the Province of Canada. County constituency of Lower Canada 1 and 2 Vict., c. 9.

XIX. And be it enacted that the said counties of Montmorency and Orleans shall be united into and form one county to be called the County of Montmorency; and that the said Counties of L'Assomption and La Chesnaye shall be united into and form one county to be called the County of Leinster; and that the said Further provision as to constituency of Lower Canada.

[1] See No. XCVI.

Counties of L'Acadie and Laprairie shall be united into and form one county to be called the County of Huntingdon; and that the Counties of Dorchester and Beauce shall be united into and form one county to be called the County of Dorchester; and that each of the said Counties of Montmorency, Leinster, Huntingdon, and Dorchester shall be represented by one member in the Legislative Assembly of the said Province of Canada.

Town constituency of Lower Canada.

XX. And be it enacted that the Cities of Quebec and Montreal shall each be represented by two members, and the Towns of Three Rivers and Sherbrooke shall each be represented by one member in the Legislative Assembly of the Province of Canada.

Boundaries of cities and towns to be settled by the Governor.

XXI. And be it enacted that for the purpose of electing their several representatives to the said Legislative Assembly, the cities and towns hereinbefore mentioned shall be deemed to be bounded and limited in such manner as the Governor of the Province of Canada, by letters patent under the Great Seal of the Province to be issued within thirty days after the union of the said Provinces of Upper Canada and Lower Canada shall set forth and describe; and such parts of any such city or town (if any), which shall not be included within the boundary of such city or town respectively by such letters patent for the purposes of this Act, shall be taken to be a part of the adjoining county or riding for the purpose of being represented in the said Legislative Assembly.

Returning Officers.

XXII. And be it enacted that for the purpose of electing the members of the Legislative Assembly of the Province of Canada it shall be lawful for the Governor of the said Province from time to time to nominate proper persons to execute the office of Returning Officer in each of the said counties, ridings, cities, and towns, which shall be represented in the Legislative Assembly of the Province of Canada, subject nevertheless to the provisions hereinafter contained.

Term of office of Returning Officer.

XXIII. And be it enacted that no person shall be obliged to execute the said office of Returning Officer for any longer term than one year, or oftener than once, unless it shall be at any time otherwise provided by some Act or Acts of the Legislature of the Province of Canada.

Writs of election.

XXIV. And be it enacted that writs for the election of members to serve in the Legislative Assembly of the Province of Canada shall be issued by the Governor of the said Province within fourteen days after the sealing of such instrument, as aforesaid, for summoning and calling together such Legislative Assembly; and that such writs shall be directed to the returning officers of the said counties, ridings, cities and towns respectively; and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall at any time be otherwise provided by any Act of the Legislature of the said Province; and that writs shall in like manner and form be issued for the election of members in the case of any vacancy which shall happen by the death or resignation of the person chosen, or by his being summoned to the Legislative Council of the said Province, or from any other legal cause; and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall be at any time otherwise provided by any Act of the Legislature of the said Province; and that in any case of any such vacancy which shall happen by the death of the person chosen, or by reason of his being so summoned as aforesaid, the writ for the election of a new member shall be issued within six days after notice thereof shall have been delivered to or left at the office of the proper officer for issuing such writs of election.

Time and place of holding elections.

XXV. And be it enacted that it shall be lawful for the Governor of the Province of Canada for the time being to fix the time and place of holding elections of members to serve in the Legislative Assembly of the said Province, until otherwise provided for as hereinafter mentioned, giving not less than eight days' notice of such time and place.

Power to alter system of representation.

XXVI. And be it enacted that it shall be lawful for the Legislature of the Province of Canada, by any Act or Acts to be hereafter passed, to alter the divisions and extent of the several counties, ridings, cities, and towns which shall be represented in the Legislative Assembly of the Province of Canada, and to establish new and other divisions of the same, and to alter the appointment of representatives to be chosen by the said counties, ridings, cities, and towns respectively, and make a new and different apportionment of the number of representatives to be chosen in and for those parts of the Province of Canada which now constitute the said Provinces of Upper and Lower Canada respectively,

and in and for the several districts, counties, ridings, and towns in the same, and to alter and regulate the appointment of returning officers in and for the same, and make provision in such manner as they may deem expedient for the issuing and return of writs for the election of members to serve in the said Legislative Assembly, and the time and place of holding such elections; Provided always that it shall not be lawful to present to the Governor of the Province of Canada for her Majesty's assent any bill of the Legislative Council and Assembly of the said Province by which the number of representatives in the Legislative Assembly may be altered, unless the second and third reading of such bill in the Legislative Council and Legislative Assembly shall have been passed with the concurrence of two-thirds of the members for the time being of the said Legislative Council, and of two-thirds of the members for the time being of the said Legislative Assembly respectively, and the assent of her Majesty shall not be given to any such bill unless addresses shall have been presented by the Legislative Council and the Legislative Assembly respectively to the Governor, stating that such bill has been so passed. Proviso.[1]

XXVII. And be it enacted that until provision shall otherwise be made by an Act or Acts of the Legislature of the Province of Canada all the laws which at the time of the passing of this Act are in force in the Province of Upper Canada, and all the laws which at the time of the passing of the said Act of Parliament,[2] intituled "An Act to make temporary provision for the Government of Lower Canada" were in force in the Province of Lower Canada, relating to the qualification and disqualification of any person to be elected, or to sit or vote as a member of the Assembly in the said Provinces respectively, (except those which require a qualification of property in candidates for election, for which provision is hereinafter made), and relating to the qualification and disqualification of voters at the election of members to serve in the Assemblies of the said Provinces respectively and to the oaths to be taken by any such voters, and to the powers and duties of returning officers, and the proceedings at such elections, and the period during which such elections may be lawfully continued, and relating to the trial of controverted elections and the proceedings incident thereto, and to the vacating of seats of members, and the issuing and execution of new writs in case of any seat being vacated otherwise than by a dissolution of the Assembly, shall respectively be applied to elections of members to serve in the Legislative Assembly of the Province of Canada for places situated in those parts of the Province of Canada for which such laws were passed. The present election laws of the two Provinces to apply until altered. 1 and 2 Vict., c. 9.

XXVIII. And be it enacted that no person shall be capable of being elected a member of the Legislative Assembly of the Province of Canada who shall not be legally or equitably seised as of freehold, for his own use and benefit, of lands or tenements held in free and common soccage, or seised or possessed, for his own use and benefit, of lands or tenements held in fief or in roture, within the said Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon and due and payable out of or affecting the same; and that every candidate at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration: Qualification of members.

"*I, A.B., do declare and testify that I am duly seised at law or in equity as of "freehold, for my own use and benefit, of lands or tenements held in free and common "soccage, or duly seised or possessed for my own use and benefit, of lands or tene- "ments held in fief or in roture (as the case may be), in the Province of Canada, of "the value of five hundred pounds of sterling money of Great Britain, over and "above all rents, mortgages, charges and incumbrances charged upon, or due and "payable out of, or affecting the same; and that I have not collusively or colourably "obtained a title to or become possessed of the said lands and tenements, or any part "thereof, for the purpose of qualifying or enabling me to be returned a member of the "Legislative Assembly of the Province of Canada.*" Declaration of candidates for election.

XXIX. And be it enacted that if any person shall knowingly and wilfully make a false declaration respecting his qualification as a candidate at any election as aforesaid, such person shall be deemed to be guilty of a misdemeanor, and being thereof lawfully convicted shall suffer the like pains and penalties as by law are incurred by persons guilty of wilful and corrupt perjury in the place in which such false declaration shall have been made. Persons making false declaration liable to the penalties of perjury.

[1] For the repeal of this proviso, see No. CLIX.

[2] No. XCVI.

Place and times of holding Parliament.

XXX. And be it enacted that it shall be lawful for the Governor of the Province of Canada for the time being to fix such place or places within any part of the Province of Canada, and such times for holding the first and every other session of the Legislative Council and Assembly of the said Province as he may think fit, such times and places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the said Legislative Council and Assembly from time to time, and dissolve the same, by proclamation or otherwise, whenever he shall deem it expedient.

Duration of Parliament.

XXXI. And be it enacted that there shall be a session of the Legislative Council and Assembly of the Province of Canada once at least in every year, so that a period of twelve calendar months shall not intervene between the last sitting of the Legislative Council and Assembly in one session and the first sitting of the Legislative Council and Assembly in the next session; and that every Legislative Assembly of the said Province hereafter to be summoned and chosen shall continue for four years from the day of the return of the writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor of the said Province.

First calling together of the Legislature.

XXXII. And be it enacted that the Legislative Council and Assembly of the Province of Canada shall be called together for the first time at some period not later than six calendar months after the time at which the Provinces of Upper and Lower Canada shall become reunited as aforesaid.

Election of the Speaker.

XXXIII. And be it enacted that the members of the Legislative Assembly of the Province of Canada shall, upon the first assembling after every general election, proceed forthwith to elect one of their number to be Speaker; and in case of his death, resignation, or removal by a vote of the said Legislative Assembly, the said members shall forthwith proceed to elect another of such members to be such Speaker; and the Speaker so elected shall preside at all meetings of the said Legislative Assembly.

Quorum.

XXXIV. And be it enacted that the presence of at least twenty members of the Legislative Assembly of the Province of Canada, including the Speaker, shall be necessary to constitute a meeting of the said Legislative Assembly for

Division.

the exercise of its powers; and that all questions which shall arise in the said Assembly shall be decided by the majority of voices of such members as shall be

Casting vote.

present, other than the Speaker, and when the voices shall be equal the Speaker shall have the casting voice.

No member to sit or vote until he has taken the following oath of allegiance.

XXXV. And be it enacted that no member, either of the Legislative Council or of the Legislative Assembly of the Province of Canada, shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the said Province, or before some person or persons authorized by such Governor to administer such oath:

Oath of allegiance.

"*I, A.B., do sincerely promise and swear that I will be faithful and bear true* "*allegiance to her Majesty, Queen Victoria, as lawful Sovereign of the United* "*Kingdom of Great Britain and Ireland, and of this Province of Canada, dependent* "*on and belonging to the said United Kingdom; and that I will defend her to the* "*utmost of my power against all traitorous conspiracies and attempts whatever,* "*which shall be made against her person, crown, and dignity; and that I will do* "*my utmost endeavour to disclose and make known to her Majesty, her heirs and* "*successors, all treasons and traitorous conspiracies and attempts which I shall* "*know to be against her or any of them; and all this I do swear without any equivoca-* "*tion, mental evasion, or secret reservation, and renouncing all pardons and dis-* "*pensations from any person or persons whatever to the contrary.* SO HELP ME GOD."

Affirmation instead of oath.

XXXVI. And be it enacted that every person authorized by law to make an affirmation instead of taking an oath may make such affirmation in every case in which an oath is hereinbefore required to be taken.

Giving or withholding assent to bills.

XXXVII. And be it enacted that whenever any bill which has been passed by the Legislative Council and Assembly of the Province of Canada shall be presented for her Majesty's assent to the Governor of the said Province, such Governor shall declare according to his discretion, but subject nevertheless to the provisions contained in this Act, and to such instructions as may from time to time be given in that behalf by her Majesty, her heirs or successors, that he assents to such bill in her Majesty's name, or that he withholds her Majesty's assent, or that he reserves such bill for the signification of her Majesty's pleasure thereon.

Disallowance of bills assented to.

XXXVIII. And be it enacted that whenever any bill, which shall have been presented for her Majesty's assent to the Governor of the said Province of Canada, shall by such Governor have been assented to in her Majesty's name, such Governor shall by the first convenient opportunity transmit to one of her Majesty's principal Secretaries of State an authentic copy of such bill so assented to; and that it shall be lawful at any time within two years after such bill shall have been so received by such Secretary of State, for her Majesty by Order in Council to declare her disallowance of such bill; and that such disallowance, together with a certificate under the hand and seal of such Secretary of State certifying the day on which such bill was received as aforesaid, being signified by such Governor to the Legislative Council and Assembly of Canada by speech or message to the Legislative Council and Assembly of the said Province, or by proclamation, shall make void and annul the same from and after the day of such signification.

Assent to bills reserved.

XXXIX. And be it enacted that no bill which shall be reserved for the signification of her Majesty's pleasure thereon shall have any force or authority within the Province of Canada until the Governor of the said Province shall signify, either by speech or message to the Legislative Council and Assembly of the said Province, or by proclamation, that such bill has been laid before her Majesty in Council and that her Majesty has been pleased to assent to the same; and that an entry shall be made in the journals of the said Legislative Council of every such speech, message, or proclamation, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept amongst the records of the said Province; and that no bill which shall be so reserved as aforesaid shall have any force or authority in the said Province unless her Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for her Majesty's assent to the Governor as aforesaid.

Authority of the Governor.

XL. Provided always, and be it enacted that nothing herein contained shall be construed to limit or restrain the exercise of her Majesty's prerogative in authorizing, and that, notwithstanding this Act and any other Act or Acts passed in the Parliament of Great Britain, or in the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of the Province of Quebec, or of the Provinces of Upper or Lower Canada respectively, it shall be lawful for her Majesty to authorize the Lieutenant-Governor of the Province of Canada to exercise and execute, within such parts of the said Province as her Majesty shall think fit, notwithstanding the presence of the Governor within the Province, such of the powers, functions, and authority, as well judicial as other, which before and at the time of passing of this Act were and are vested in the Governor, Lieutenant-Governor, or person administering the Government of the Provinces of Upper and Lower Canada respectively, or of either of them, and which from and after the said reunion of the said two Provinces shall become vested in the Governor of the Province of Canada; and to authorize the Governor of the Province of Canada to assign, depute, substitute and appoint any person or persons, jointly or severally, to be his deputy or deputies within any part or parts of the Province of Canada, and in that capacity to exercise, perform and execute during the pleasure of the said Governor such of the powers, functions, and authorities, as well judicial as other, as before and at the time of the passing of this Act were and are vested in the Governor, Lieutenant-Governor or person administering the Government of the Provinces of Upper and Lower Canada respectively, and which from and after the union of the said Provinces shall become vested in the Governor of the Province of Canada, as the Governor of the Province of Canada shall deem to be necessary or expedient: Provided always, that by the appointment of a deputy or deputies as aforesaid the power and authority of the Governor of the Province of Canada shall not be abridged, altered, or in any way affected otherwise than as her Majesty shall think proper to direct.

Language of Legislative records.

XLI. And be it enacted that from and after the said reunion of the said two Provinces, all writs, proclamations, instruments for summoning and calling together the Legislative Council and Legislative Assembly of the Province of Canada and for proroguing and dissolving the same, and all writs of summons and election, and all writs and public instruments whatsoever relating to the said Legislative Council and Legislative Assembly or either of them, and all returns to such writs and instruments, and all journals, entries, and written or printed

proceedings of what nature soever of the said Legislative Council and Legislative Assembly and each of them respectively, and all written or printed proceedings and reports of committees of the said Legislative Council and Legislative Assembly respectively, shall be in the English language only: Provided always, that this enactment shall not be construed to prevent translated copies of any such documents being made, but no such copy shall be kept among the records of the Legislative Council or Legislative Assembly, or be deemed in any case to have the force of an original record.[1]

Ecclesiastical and Crown rights.

XLII. And be it enacted that whenever any bill or bills shall be passed by the Legislative Council and Assembly of the Province of Canada containing any provisions to vary or repeal any of the provisions now in force contained in an Act[2] of the Parliament of Great Britain passed in the fourteenth year of the reign of his late Majesty King George the Third, intituled "An Act for making more effectual provision for the Government of the Province of Quebec in North America," or in the aforesaid Act of Parliament passed in the thirty-first year of the same reign, respecting the accustomed dues and rights of the clergy of the Church of Rome; or to vary or repeal any of the several provisions contained in the said last mentioned Act respecting the allotment and appropriation of land for the support of the Protestant clergy within the Province of Canada, or respecting the constituting, erecting or endowing of parsonages or rectories within the Province of Canada, or respecting the presentation of incumbents or ministers of the same, or respecting the tenure on which such incumbents or ministers shall hold or enjoy the same; and also that whenever any bill or bills shall be passed containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any form or mode of religious worship, or shall impose or create any penalties, burdens, disabilities, or disqualifications in respect of the same, or shall in any manner relate to or affect the payment, recovery, or enjoyment of any of the accustomed dues or rights hereinbefore mentioned, or shall in any manner relate to the granting, imposing, or recovering of any other dues, or stipends, or emoluments to be paid to or for the use of any minister, priest, ecclesiastic, or teacher according to any form or mode of religious worship, in respect of his said office or function; or shall in any manner relate to or affect her Majesty's prerogative touching the granting of waste lands of the Crown within the said Province; every such bill or bills shall, previously to any declaration or signification of her Majesty's assent thereto, be laid before both Houses of Parliament,[3] of the United Kingdom of Great Britain and Ireland; and that it shall not be lawful for her Majesty to signify her assent to any such bill or bills until thirty days after the same shall have been laid before the said Houses, or to assent to any such bill or bills in case either House of Parliament shall within the said thirty days address her Majesty to withhold her assent from any such bill or bills; and that no such bill shall be valid or effectual to any of the said purposes within the said Province of Canada unless the Legislative Council and Assembly of such Province shall, in the session in which the same shall have been passed by them have presented to the Governor of the said Province an address or addresses specifying that such bill or bills contains provisions for some of the purposes hereinbefore specially described, and desiring that, in order to give effect to the same such bill or bills may be transmitted to England without delay, for the purpose of its being laid before Parliament previously to the signification of her Majesty's assent thereto.

14 G. 3, c. 83.

Colonial taxation.

XLIII. And whereas by an Act[4] passed in the eighteenth year of the reign of his late Majesty King George the Third, entitled "An Act for removing all Doubts and Apprehensions concerning Taxation by the Parliament of Great Britain in any of the Colonies, Provinces, and Plantations in North America and the West Indies; and for repealing so much of an Act made in the seventh year of the reign of his present Majesty as imposes a duty on Tea imported from Great Britain into any Colony or Plantation in America, or relating thereto," it was declared that "the King and Parliament of Great Britain would not "impose any duty, tax, or assessment whatever, payable in any of his Majesty's "Colonies, Provinces, and Plantations in North America or the West Indies,

18 G. 3, c. 12.

[1] Lord John Russell explained that this section only dealt with English as the language of 'original record'. There is nothing, however, in this section against French as the language of debate, and indeed it was used as such from the time of the first union parliament. For the repeal of this section, see No. CLVIII and note.

[2] No. XXXI.

[3] For repeal of this enactment, see No. CLIX.

[4] See No. XXXIX.

"except only such duties as it might be expedient to impose for the regulation "of commerce, the net produce of such duties to be always paid and applied to "and for the use of the Colony, Province, or Plantation in which the same shall "be respectively levied, in such manner as other duties collected by the authority "of the respective General Courts or General Assemblies of such Colonies, "Provinces, or Plantations were ordinarily paid and applied": And whereas it is necessary for the general benefit of the Empire that such power of regulation of commerce should continue to be exercised by her Majesty and the Parliament of the United Kingdom of Great Britain and Ireland, subject nevertheless to the conditions hereinbefore recited with respect to the application of any duties which may be imposed for that purpose; be it therefore enacted that nothing in this Act contained shall prevent or affect the execution of any law which hath been or shall be made in the Parliament of the said United Kingdom, for establishing regulations and prohibitions, or for the imposing, levying, or collecting duties for the regulation of navigation, or for the regulation of the commerce between the Province of Canada and any other part of her Majesty's Dominions, or between the said Province of Canada or any other part thereof and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give to her Majesty any power or authority, by and with the advice and consent of such Legislative Council and Assembly of the said Province of Canada, to vary or repeal any such law or laws, or any part thereof, or in any manner to prevent or obstruct the execution thereof: Provided always, that the net produce of all duties which shall be so imposed shall at all times hereafter be applied to and for the use of the said Province of Canada, and (except as hereinafter provided) in such manner only as shall be directed by any law or laws which may be made by her Majesty, by and with the advice and consent of the Legislative Council and Assembly of such Province.

Courts of Appeal, Probate, Queen's Bench and Chancery in Upper Canada; and Court of Appeal in Lower Canada.

XLIV. And whereas by the laws now in force in the said Province of Upper Canada the Governor, Lieutenant-Governor, or person administering the Government of the said Province, or the Chief Justice of the said Province, together with any two or more of the members of the Executive Council of the said Province, constitute and are a Court of Appeal for hearing and determining all appeals from such judgments or sentences as may be lawfully brought before them: And whereas by an Act of the Legislature of the said Province of Upper Canada, passed in the thirty-third year of the reign of his late Majesty King George the Third, intituled "An Act to establish a Court of Probate in the said Province, and also a Surrogate Court in every District thereof," there was and is established a Court of Probate in the said Province, in which Act it was enacted that the Governor, Lieutenant-Governor, or person administering the Government of the said last mentioned Province should preside, and that he should have the powers and authorities in the said Act specified: And whereas by an Act of the Legislature of the said Province of Upper Canada, passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An Act respecting the Time and Place of Sitting of the Court of King's Bench," it was amongst other things enacted that his Majesty's Court of King's Bench in that Province should be holden in a place certain; that is, in the city, town or place which should be for the time being the seat of the Civil Government of the said Province, or within one mile therefrom: And whereas by an Act of the Legislature of the said Province of Upper Canada passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "An Act to establish a Court of Chancery in this Province," it was enacted that there should be constituted and established a Court of Chancery to be called and known by the name and style of "The Court of Chancery for the Province of Upper Canada," of which Court the Governor, Lieutenant-Governor, or person administering the Government of the said Province should be Chancellor; and which Court, it was also enacted, should be holden at the seat of Government in the said Province, or in such other place as should be appointed by proclamation of the Governor, Lieutenant-Governor, or person administering the Government of the said Province: And whereas by an Act of the Legislature of the Province of Lower Canada, passed in the thirty-fourth year of the reign of his late Majesty George the Third, intituled, "An Act for the Division of the Province of Lower Canada, for amending the Judicature thereof, and for repealing certain Laws therein mentioned," it was enacted that the Governor, Lieutenant-Governor, or person administering the Government, the members of the Executive Council of the

(Laws of Upper Canada, 33 G. 3, Sess. 2, c. 8.)

(Laws of Upper Canada, 2 W. 4, c. 8.)

(Laws of Upper Canada, 7 W. 4, c. 2.)

(Laws of Lower Canada, 34 G. 3.)

said Province, the Chief Justice thereof and the Chief Justice to be appointed for the Court of King's Bench at Montreal, or any five of them, the Judges of the Court of the District wherein the judgment appealed from was given excepted, should constitute a Superior Court of Civil Jurisdiction or Provincial Court of Appeals, and should take cognizance of, hear, try, and determine all causes, matters, and things appealed from all civil jurisdictions and Courts wherein an appeal is by law allowed, be it enacted that until otherwise provided by an Act of the Legislature of the Province of Canada, all judicial and ministerial authority which before and at the time of passing this Act was vested in or might be exercised by the Governor, Lieutenant-Governor, or person administering the Government of the said Province of Upper Canada, or the members or any number of the members of the Executive Council of the same Province, or was vested in and may be exercised by the Governor, Lieutenant-Governor, or the person administering the Government of the Province of Lower Canada, and the members of the Executive Council of that Province, shall be vested in and may be exercised by the Governor, Lieutenant-Governor, or person administering the Government of the Province of Canada, and in the members or the like number of the members of the Executive Council of the Province of Canada respectively; and that until otherwise provided by Act or Acts of the Legislature of the Province of Canada the said Court of King's Bench, now called the Court of Queen's Bench of Upper Canada, shall from and after the Union of the Provinces of Upper and Lower Canada be holden at the City of Toronto, or within one mile from the municipal boundary of the said City of Toronto: Provided always, that until otherwise provided by Act or Acts of the Legislature of the Province of Canada, it shall be lawful for the Governor of the Province of Canada, by and with the advice and consent of the Executive Council of the same Province, by his proclamation to fix and appoint such other place as he may think fit, within that part of the last-mentioned Province which now constitutes the Province of Upper Canada, for the holding of the said Court of Queen's Bench.

Powers to be exercised by Governor, with the Executive Council, or alone.

XLV. And be it enacted that all powers, authorities, and functions which by the said Act passed in the thirty-first year of the reign of his late Majesty, King George the Third, or by any other Act of Parliament, or by any Act of the Legislature of the Provinces of Upper and Lower Canada respectively, are vested in or are authorized or required to be exercised by the respective Governors or Lieutenant-Governors of the said Provinces, with the advice or with the advice and consent of the Executive Council of such Provinces respectively, or in conjunction with such Executive Council or with any number of the members thereof, or by the said Governors or Lieutenant-Governors individually and alone, shall, in so far as the same are not repugnant to or inconsistant with the provisions of this Act, be vested in and may be exercised by the Governor of the Province of Canada, with the advice or with the advice and consent of or in conjunction as the case may require with such Executive Council, or any members thereof, as may be appointed by her Majesty for the affairs of the Province of Canada, or by the said Governor of the Province of Canada individually and alone in cases when the advice, consent, or concurrence of the Executive Council is not required.

Existing laws saved.

XLVI. And be it enacted that all laws, statutes, and ordinances which at the time of the union of the Provinces of Upper and Lower Canada shall be in force within the said Provinces or either of them or any part of the said Provinces respectively, shall remain and continue to be of the same force, authority, and effect in those parts of the Province of Canada which now constitute the said Provinces respectively as if this Act had not been made, and as if the said two Provinces had not been united as aforesaid, except in so far as the same are repealed or varied by this Act, or in so far as the same shall or may hereafter by virtue and under the authority of this Act be repealed or varied by any Act or Acts of the Legislature of the Province of Canada.

Courts of Justice, Commissions, Officers, etc.

XLVII. And be it enacted that all the courts of civil and criminal jurisdiction within the Provinces of Upper and Lower Canada at the time of the union of the said Provinces, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, or ministerial, within the said Provinces respectively, except in so far as the same may be abolished, altered, or varied by or may be inconsistent with the provisions of this Act, or shall be abolished, altered, or varied by any Act or Acts of the Legislature of the Province of Canada,

shall continue to subsist within those parts of the Province of Canada which now constitute the said two Provinces respectively, in the same form and with the same effect as if this Act had not been made, and as if the said two Provinces had not been reunited as aforesaid.

Provisions respecting temporary Acts.

XLVIII. And whereas the Legislatures of the said Provinces of Upper and Lower Canada have from time to time passed enactments, which enactments were to continue in force for a certain number of years after the passing thereof, "and from thence to the end of the then next ensuing session of the Legislature of the Province in which the same were passed"; be it therefore enacted that whenever the words, "and from thence to the end of the then next ensuing session of the Legislature," or words to the same effect, have been used in any temporary Act of either of the said two Provinces which shall not have expired before the reunion of the said two Provinces, the said words shall be construed to extend and apply to the next session of the Legislature of the Province of Canada.

Repeal of part of 3 G. 4, c. 119.

XLIX. And whereas by a certain Act passed in the third year of the reign of his late Majesty, King George the Fourth, intituled, "An Act to regulate the Trade of the Provinces of Upper and Lower Canada, and for other purposes relating to the said Provinces," certain provisions were made for appointing arbitrators with power to hear and determine certain claims of the Province of Upper Canada upon the Province of Lower Canada, and to hear any claim which might be advanced on the part of the Province of Upper Canada to a proportion of certain duties therein mentioned, and for prescribing the course of proceeding to be pursued by such arbitrators; be it enacted that the said recited provisions of the said last-mentioned Act, and all matters in the same Act contained, which are consequent to or dependent upon the said provisions or any of them, shall be repealed.

Revenues of the two provinces to form a Consolidated Revenue Fund.

L. And be it enacted that upon the union of the Provinces of Upper and Lower Canada, all duties and revenues over which the respective Legislatures of the said Provinces before and at the time of the passing of this Act had and have power of appropriation, shall form one consolidated revenue fund to be appropriated for the public service of the Province of Canada in the manner and subject to the charges hereinafter mentioned.

Consolidated Revenue Fund to be charged with expense of collection, etc.

LI. And be it enacted that the said consolidated revenue fund of the Province of Canada shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof, such costs, charges, and expenses, being subject nevertheless to be reviewed and audited in such manner as shall be directed by any Act of the Legislature of the Province of Canada.

£45,000 to be granted permanently for the Services in Schedule A, an £30,000 for the life of Her Majesty and five years following for those in Schedule B.

LII. And be it enacted that out of the consolidated revenue fund of the Province of Canada there shall be payable in every year to her Majesty, her heirs and successors, the sum of forty-five thousand pounds for defraying the expense of the several services and purposes named in the Schedule marked A to this Act annexed; [1] and during the life of her Majesty, and for five years after the demise of her Majesty, there shall be payable to her Majesty, her heirs and successors, out of the said consolidated revenue fund, a further sum of thirty thousand pounds, for defraying the expense of the several services and purposes named in the Schedule marked B to this Act annexed; the said sums of forty-five thousand pounds and thirty thousand pounds to be issued by the Receiver-General in discharge of such warrant or warrants as shall be from time to time directed to him under the hand and seal of the Governor; and the said Receiver-General shall account to her Majesty for the same, through the Lord High Treasurer or Lords Commissioners of her Majesty's Treasury, in such form and manner as her Majesty shall be graciously pleased to direct.

How the appropriation of sums granted may be varied.

LIII. And be it enacted that, until altered by any Act of the Legislature of the Province of Canada, the salaries of the Governor and of the Judges shall be those respectively set against their several offices in the said Schedule A; but that it shall be lawful for the Governor to abolish any of the offices named in the said Schedule B or to vary the sums appropriated to any of the services or purposes named in the said Schedule B; and that the amount of saving which may accrue from any such alteration in either of the said schedules shall be appropriated to such purposes connected with the administration of the Government of the said Province as to her Majesty shall seem fit; and that

[1] It has not been thought necessary for the purpose of this volume to reprint the two schedules of the act.

accounts in detail of the expenditure of the several sums of forty-five thousand and thirty thousand pounds hereinbefore granted, and of every part thereof, shall be laid before the Legislative Council and Legislative Assembly of the said Province within thirty days next after the beginning of the session after such expenditure shall have been made: Provided always that not more than two thousand pounds shall be payable at the same time for pensions to the judges out of the said sum of forty-five thousand pounds, and that not more than five thousand pounds shall be payable at the same time for pensions out of the said sum of thirty thousand pounds; and that a list of all such pensions and of the persons to whom the same shall have been granted, shall be laid in every year before the said Legislative Council and Legislative Assembly.

Surrender of Hereditary Revenues of the Crown.

LIV. And be it enacted that during the time for which the said several sums of forty-five thousand pounds and thirty thousand pounds are severally payable the same shall be accepted and taken by her Majesty by way of Civil List, instead of all territorial and other revenues now at the disposal of the Crown, arising in either of the said Provinces of Upper Canada or Lower Canada, or in the Province of Canada, and that three-fifths of the net produce of the said territorial and other revenues now at the disposal of the Crown within the Province of Canada shall be paid over to the account of the said consolidated revenue fund; and also during the life of her Majesty and for five years after the demise of her Majesty the remaining two-fifths of the net produce of the said territorial and other revenues now at the disposal of the Crown within the Province of Canada shall be also paid over in like manner to the account of the said consolidated revenue fund.

Charges already created in either Province.

LV. And be it enacted that the consolidation of the duties and revenues of the said Province shall not be taken to affect the payment out of the said consolidated revenue fund of any sum or sums heretofore charged upon the rates and duties already raised, levied, and collected to and for the use of either of the said Provinces of Upper Canada or Lower Canada, or of the Province of Canada, for such time as shall have been appointed by the several Acts of the Legislature of the Province by which such charges were severally authorized.

The order of charges on the Consolidated Fund to be:—
1st, Expense of Collection;
2nd, Interest of the debt;
3rd, payments to the Clergy;
4th, 5th, Civil List; 6th, Other charges already made on the Public Revenue.

LVI. And be it enacted that the expenses of the collection, management, and receipt of the said consolidated revenue fund shall form the first charge thereon; and that the annual interest of the Public Debt of the Provinces of Upper and Lower Canada, or of either of them, at the time of the reunion of the said Provinces shall form the second charge thereon; and that the payments to be made to the clergy of the United Church of England and Ireland, and to clergy of the Church of Scotland, and to ministers of other Christian denominations, pursuant to any law or usage whereby such payments before or at the passing of this Act were or are legally or usually paid out of the public or Crown revenue of either of the Provinces of Upper and Lower Canada, shall form the third charge upon the said consolidated revenue fund; and that the said sum of forty-five thousand pounds shall form the fourth charge thereon; and that the said sum of thirty thousand pounds, as long as the same shall continue to be payable, shall form the fifth charge thereon; and that the other charges upon the rates and duties levied within the said Province of Canada hereinbefore reserved shall form the sixth charge thereon, so long as such charges shall continue to be payable.

Subject to the above charges, the Consolidated Revenue Fund to be appropriated by the Provincial Legislature, by bills, etc.

LVII. And be it enacted that, subject to the several payments hereby charged on the said Consolidated Revenue Fund, the same shall be appropriated by the Legislature of the Province of Canada for the public service in such manner as they shall think proper: Provided always that all bills for appropriating any part of the surplus of the said consolidated revenue fund, or for imposing any new tax or impost, shall originate in the Legislative Assembly of the said Province of Canada: Provided also that it shall not be lawful for the said Legislative Assembly to originate or pass any vote, resolution, or bill for the appropriation of any part of the surplus of the said consolidated revenue fund, or of any other tax or impost, to any purpose which shall not have been first recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote, resolution, or bill shall be passed.

Townships to be constituted.

LVIII. And be it enacted that it shall be lawful for the Governor, by an instrument or instruments to be issued by him for that purpose under the Great Seal of the Province, to constitute townships [1] in those parts of the

[1] Cf. Nos. CXXII, CXXIV, CXXVI.

Province of Canada in which townships are not already constituted, and to fix metes and bounds thereof, and to provide for the election and appointment of township officers therein, who shall have and exercise the like powers as are exercised by the like officers in the townships already constituted in that part of the Province of Canada now called Upper Canada; and every such instrument shall be published by proclamation, and shall have the force of law from a day to be named in each case in such proclamation.

Powers of Governor, how to be exercised.

LIX. And be it enacted that all powers and authorities expressed in this Act to be given to the Governor of the Province of Canada shall be exercised by such Governor in conformity with and subject to such orders, instructions, and directions as her Majesty shall from time to time see fit to make or issue.

Magdalen Islands may be annexed to the Island of Prince Edward.

LX. And whereas his late Majesty King George the Third, by his Royal Proclamation,[1] bearing date the seventh day of October in the third year of his reign, was pleased to declare that he had put the coast of Labrador from the River St. John to Hudson's Straits, with the islands of Anticosti and Madelaine and all other smaller islands lying on the said coast, under the care and inspection of the Governor of Newfoundland; And whereas by an Act[2] passed in the fourteenth year of the reign of his said late Majesty, intituled "An Act for making more effectual provision for the Government of the Province of Quebec in North America," all such territories, islands, and countries, which had since the tenth day of February in the year one thousand seven hundred and sixty-three been made part of the Government of Newfoundland, were during his Majesty's pleasure annexed to and made part and parcel of the Province of Quebec as created and established by the said Proclamation; be it hereby declared and enacted that nothing in this or any other Act contained shall be construed to restrain her Majesty, if she shall be so pleased, from annexing the Magdalen Islands in the Gulf of St. Lawrence to her Majesty's Island of Prince Edward.

Interpretation clause.

LXI. And be it enacted that in this Act, unless otherwise expressed therein, the words "Act of the Legislature of the Province of Canada" are to be understood to mean "Act of her Majesty, her Heirs or Successors, enacted by her Majesty, or by the Governor on behalf of her Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Canada"; and the words "Governor of the Province of Canada" are to be understood as comprehending the Governor, Lieutenant-Governor, or person authorized to execute the Office of the functions of Governor of the said Province.

Act may be amended, etc.

LXII. And be it enacted that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

## CXXII

## POULETT THOMSON TO RUSSELL

[Trans.: *Imperial Blue Books relating to Canada*, 1841–3, vol. xiv.]

Toronto,
16*th September*, 1840.

My Lord,

I have the honour to acknowledge the receipt of a copy of the Act for re-uniting the Provinces of Upper and Lower Canada, and for the Government of Canada.

I have carefully perused the Act, and I observe with regret that some alterations have been made from the original plan which I transmitted, which will create difficulty and embarrassment here, especially the restrictions introduced in the schedule for the Civil list, to which I before called your attention. There is nothing, however, in those changes which will, I believe, offer any insuperable obstacle to the working of the Act.

But it is with the deepest mortification that I find that the whole of the system for the establishment of local government has been omitted from the Bill, and that Her Majesty's Government and Parliament have contented themselves with the simple legislative re-union of the two Provinces, without providing any machinery by which they can be satisfactorily governed when united, or guarding against those evils which have been so severely felt from the absence of local

[1] See No. VII. [2] No. XXXI.

government, and the consequent assumption by the assemblies of functions which did not properly belong to them, evils which will now be increased tenfold, after the two provinces shall have been placed under one government and one legislature.

I need scarcely recall to your Lordship's attention the circumstances connected with this measure. In the year 1839, when the affairs of the Canadas were under the consideration of Her Majesty's Government, and it was determined, upon the recommendation of the Earl of Durham, to re-unite the provinces, the Cabinet was so deeply impressed with the truth of his declaration, of the absolute necessity of the establishment by Parliament of a system of local government simultaneously with the measure for the union, that the plan then submitted and embodied in the Bill of that year, proceeded altogether upon that principle. Five districts were created apart from the central legislature, and the whole frame of the measure was erected in accordance with it. I need not either remind your Lordship that whilst this was the unanimous opinion of the Cabinet, those members of it who really took a deep interest in Canadian matters entertained so strongly the opinion of the necessity of enforcing this principle, that they would not have assented to any plan which involved its exclusion. The Bill of 1839 was withdrawn, and I was deputed to obtain the assent of the people and legislature of the two Canadas to the union, and to transmit a plan for effecting it, and for the future government of the two provinces. But in the instructions with which I was honoured with a view to my proceedings, I was emphatically told that one of the most important principles to be kept in view in any measures for the future government of the Canadas was "the establishment of a system of local government by representative bodies freely elected in the various cities and rural districts." "That after a full investigation of every other plan which has been suggested, Her Majesty's Government have not been able to discover in any but this the reasonable hope of a satisfactory settlement." "That attaching minor importance to the details," "they cannot depart from these principles."

Accordingly, in pursuance of the duty assigned to me, and having obtained the assent of the legislators of the two provinces to the terms of the union as they affected each in its relation to the other, or to the Crown, I transmitted such a plan for local government as, whilst it entirely established the principle for which Her Majesty's Government contended, and the adoption of which they and I deemed indispensable, altogether removed the defects of the scheme of last year, and was generally acceptable to the people. This plan received the cordial approbation of Her Majesty's Government. Your Lordship did not indeed deem it expedient to introduce to Parliament the clauses for carrying out the provisions for the system which I transmitted to you, but you did more, for you called upon Parliament to enable me to provide all the necessary machinery myself, subject to the leading principles which I had recommended.

Under such circumstances I should have been far less surprised to find the Union Bill abandoned altogether by the Government, than this most essential part of it withdrawn. I should certainly have infinitely preferred that the Bill should have been deferred, rather than deprived of what rendered it safe, or gave a fair chance of its being advantageous.

For if, before my better acquaintance with these colonies, the information which I could acquire from the reports of others and from general reasoning, had satisfied me of the necessity, to use the words of Lord Durham, "of making the establishment of good municipal institutions for the whole country a part of the colonial constitution;" the opportunity I have now had of studying the state of the British North American provinces—of observing the social condition of the people, and the working of the constitutions under which they have been governed—has convinced me that the cause of nearly all the difficulty in the government of every one of them, is to be found in the absence of any well organized system of local government.

Owing to this, duties the most unfit to be discharged by the general legislature are thrown upon it; powers equally dangerous to the subject and to the Crown are assumed by the Assembly. The people receive no training in those habits of self-government which are indispensable to enable them rightly to exercise the power of choosing representatives in Parliament. No field is open for the gratification of ambition in a narrow circle, and no opportunity given for testing the talents or integrity of those who are candidates for popular favour. The people acquire no habits of self-dependence for the attainment of their own local

objects. Whatever uneasiness they may feel—whatever little improvement in their respective neighbourhoods may appear to be neglected, affords grounds for complaint against the executive. All is charged directly upon the Government, and a host of discontented spirits are ever ready to excite these feelings. On the other hand while the Government is thus brought directly in contact with the people, it has neither any officer in its own confidence in the different parts of these extended provinces from whom it can seek information, nor is there any recognized body enjoying the public confidence with whom it can communicate, either to determine what are the real wants and wishes of the locality, or through whom it may afford explanation.

Hence the readiness with which a demand for organic changes in the constitution has been received by the people.

Upon every consideration, therefore, I am of opinion that it was our duty to seize the first opportunity of supplying, through the Imperial Legislature, this capital omission in the constitution of these colonies, by the establishment of a good system of local government; and although the Act would, in fact, only have extended to the Canadas, I entertain no doubt that with such an authority before them, similar provisions would have been adopted by the legislatures in Nova Scotia and New Brunswick, where the defect is no less glaring.

But it may be said, why not trust to the provincial legislatures for the establishment of such institutions if they are needed?

Lord Durham has give the reply which certainly appeared last year conclusive to Her Majesty's Government, and the correctness of which I can now confirm—"That it is vain to expect that such a sacrifice of power will be voluntarily made by a representative body;" and to this I may also add, that although, after a considerable time and much excitement, the people might compel their representatives to establish such a system, it is so easy to mislead them by representations against taxation; although no more is in fact intended than to give the *power* of taxation by themselves for their own local objects: and the argument in favour of its being the *duty* of the Government to find money for all their wants, is so specious and popular, that it would probably be some time before the people exerted themselves strenuously for this purpose; and when they did, I greatly doubt whether it would be possible to obtain those checks against abuse without which the system would fail; and which it was my object to introduce in the manner submitted by me to Her Majesty's Government and approved by them.

With reference, therefore, to the future interests of all Her Majesty's North American possessions, I deeply deplore the determination which has been taken; whilst with regard to the immediate and practical matter before me—namely, the government of the two Canadas under the Union Act, I confess that I am almost at a loss to conceive how it is proposed that it should be conducted.

Under the provisions of the Union Act, not only will the general affairs of a country, 1,200 miles long, be placed under the direction of one executive authority, thus distant from places where it may be called upon to act; but the local concerns of every district, and even village, through that vast extent of territory must be more or less under its superintendence, and that too in matters of which it can know little or nothing. The provision by which the initiative of all money votes is confined to the Governor, is a most valuable and important change in the constitution of these provinces; but it places a responsibility on the executive which can only be exercised under a system which relieves the public funds from demands for every little paltry expenditure, and confines their application to matters of general utility. As the Act now stands, the executive government will be called upon to propose every grant of £5 or £10 for a road or a bridge 600 or 700 miles from the seat of government; of the merits of which it can know nothing, and of which it can learn nothing, except through representations which it has no opportunity of testing. If it acts, therefore, it will probably act wrong; if it does not, it is at once exposed to the reproach of having neglected the interest of the locality which it was bound to consider and advance. Whilst these duties are imposed upon it, too, no means whatever are afforded by which it can acquire information, or exercise the slightest control. In Upper Canada it is true that there is some machinery in the different districts now established by law, which will prevent the executive from being wholly powerless. There is an organization in each district of sheriffs, grand juries, etc. and the magistrates

possess under the provincial laws certain powers which, although defective, still afford the means of going on. But in Lower Canada this is entirely wanting; and the division there for judicial purposes is of a character which affords no assistance whatever with respect to the rural districts of the province. The hand of the Government is entirely unknown and unfelt throughout them. If I had to seek for information from any place from 10 to 150 miles from Quebec or Montreal, I possess no means whatever of obtaining it, except from the authorities called into existence by the rebellion, and for whose permanency there is no security whatever. If the executive seeks to know the opinion of the people with regard to any improvement, there is no one to whom application can be made. In a word, every country district throughout the whole of the vast province of Lower Canada, is as completely cut off from any connection with the executive, as if it were on the other side of the Atlantic, and under a different form of government.

I certainly was impressed with the opinion that the existence of this state of things must be fully known to Her Majesty's government, and that after the deliberate judgment that had been arrived at last year, and the instructions I had received, it was, therefore, unnecessary for me to have repeated any statement, or have furnished any fresh argument in support of the principle of local government.

It remains for me, however, now only to consider the course which I can pursue under the determination which has been arrived at.

Entertaining so strongly as I do the conviction that the principal advantages intended by the Union Act are defeated by the omission of this part of the scheme, I confess that I should strongly incline to defer acting upon the powers conferred by it, and proclaiming the Union at all, until Parliament had again had an opportunity of reconsidering these clauses. But I must acknowledge that the delay which would thus arise, and the reopening the Canada question in England, where unfortunately, all that relates to this country is so little understood, would be probably attended with greater evils, and I cannot, therefore, take on myself the responsibility of recommending that course.

But failing this, it would be far more grateful to me, with the opinions I hold on this subject, that Her Majesty's Government should confide the attempt to work out this new measure to other hands than mine, and nothing but the anxiety which I feel to discharge my duty to the Queen to the last, and the deep interest which I now take in what concerns these provinces, would lead me to attempt the task under circumstances which I consider almost hopeless.

I am willing, however, if required, to yield to that consideration, and, above all, to the feelings of the people here, of whose confidence I have lately received so many and such flattering proofs, and I shall endeavour to work out the Act as it stands, by such means as I possess.

For Upper Canada it is out of my power to make any provision. In Lower Canada, however, I shall, with the assistance of the Special Council, provide such a system as may supply a part at least of what was intended to be given under the provisions of the Bill; at all events to the extent which is necessary to carry out fully the different ordinances of that body which have already passed, and provide for some local organization for the wants of the country districts. The Council will, under any circumstances, meet the middle of next month, to complete its labours preparatory to the Union; and I shall then propose to them measures to this effect.

I shall then be able to proclaim the Union at the earliest period at which, looking to the time when the elections could be held, and to the financial concerns of both provinces, it would be possible, namely at the beginning of January. The elections will take place as soon afterwards as they conveniently can, and when the united Parliament meets, I shall propose to them, on the part of the Government, to adopt for the whole province a system of local government which will already have been in operation here, with such additions as may appear necessary[1].

See No. CXXV

## CXXIII

## RUSSELL TO SYDENHAM

[Trans.: *Imperial Blue Books relating to Canada*, 1841–3, vol. xiv.]

Downing Street,
*25th October*, 1840.

My Lord,

I have received your Lordship's Despatch, No. 160, of the 16th September, pointing out the injurious consequences which you anticipate from the departure in the Act for the reunion of Canada from the Bill which you had proposed, and more particularly from the omission of legislative provision for local government.

Partaking as I do in the general opinions which you have expressed on this subject, I nevertheless could not supply the want of Canadian authority for the municipal clauses, which induced Sir R. Peel and Lord Stanley, friendly as they were to the Bill, to support their omission. I may also observe that Mr. Gillespie and others in this country well acquainted with Canada, concurred in the objections made to those clauses in the House of Commons.

The benefit of municipal government being so great, it is difficult to conceive that the legislature of the United Province can long resist the introduction of a system so useful to the interests, and so directly tending to increase the power of the people, when recommended warmly and repeatedly by the executive of the province and supported by the Crown.

I have, etc.,
(Signed) J. Russell.

## CXXIV

## SYDENHAM TO A FRIEND

[Trans.: Scrope, *op. cit.*]

1840 (?)

No man in his senses would think for a moment of the Union without its being accompanied by some sort of Local Government, in which the people may control their own officers, and the executive at the same time obtain some influence in the country districts.

Without a breakwater of this kind between the Central Government and the people, Government with an Assembly is impossible in Lower Canada, and most difficult in Upper Canada; and it is absurd to expect that any good system can or will be established by the Provincial Legislature, even if time admitted of its being proposed to them. No colonial legislature will ever divest itself of the great power it now possesses of parcelling out sums of money for every petty local job; and although by the Union Bill the initiative of money votes will be confined to the Government, this provision will become null, because the moment that the executive is called upon to provide for all these local expenses, with the details of which it cannot be acquainted, it must renounce the task, and leave it in the hands of the members themselves. A distinct principle must be laid down, that *all* purely local expenses be borne by the localities themselves, settled and voted by them, and that only great works be paid for out of the provincial funds.

Nor is it only with reference to the Canadas that it was all-important for Parliament itself to have laid down the principle and details of Local Government. Since I have been in these Provinces, I have become more and more satisfied that the capital cause of the misgovernment of them is to be found in the absence of Local Government, and the consequent exercise by the Assembly of powers wholly inappropriate to its functions. Members are everywhere chosen only with reference to the extent of job for their particular district which they can carry. Whoever happens to lead a party in the House, of twelve or fourteen members, may at once obtain a majority for his political views by jobbing with other members for votes upon them, or, by rejecting their jobs as the penalty of refusal, oust them from their seats. This, indeed, is admitted by the best men of all parties, and especially of the popular side. But it is equally admitted that they cannot *of themselves* change the system. In both Nova Scotia and New

Brunswick I was told that if Parliament laid down a system of Local Government for Canada, then it was likely that in these provinces too the Assembly would adopt it; but, without that, it would be impossible to get it done. So, by this step, if Lord John has really been forced to take it, not only has all chance of the Union Bill working well been destroyed, but also the hope of a change of system throughout all the Provinces. Last year, if you remember, we made it a *sine qua non* to the Union; indeed, our scheme was altogether based on it. The establishment of Municipal Government by Act of Parliament is as much a part of the intended scheme of Government for the Canadas as the union of the two Legislatures, and the more important of the two. All chance of good Government, in Lower Canada especially, depends on its immediate adoption.

# SIXTH PERIOD

## 1841–1867

# SIXTH PERIOD

## 1841–1867

Lord John Russell was not prepared to accept in its entirety Lord Durham's proposal for full responsible government, but in his instructions to Sydenham, he at least showed a new path to the British government (see No. CXI). Sydenham's plan of being his own first minister and of calling to the service of the government the best men without forming what we know technically as a cabinet was well suited for a time of stress. The recent rebellions had left memories out of all proportion to their importance. The French Canadians were full of melancholy suspicion and feared that Durham's suggestion for their absorption might be attempted. Sydenham's successor, Sir Charles Bagot, went further, and liberal selections have been made from the documents to illustrate his experiment (Nos. CXXVIII–CXLI). Sir Charles Metcalfe who followed had little belief in the possibility of establishing full responsible government (see No. CXLII), and under him the old sore was reopened. Fortunately, Sir Robert Peel's ministry fell at another difficult moment in Canadian history, and Lord John Russell came into power with Earl Grey as secretary of state for the colonial department. Almost at once the new government decided to grant full responsible government, and the principle was laid down by Earl Grey himself: 'This country has no interest whatever in exercising any greater influence on the internal affairs of the colonies than is indispensable either for the purpose of preventing any one colony from adopting measures injurious to another or to the empire at large.'[1]

It has been impossible to give examples of documents which would illustrate in full the development of responsible government in the maritime provinces. Joseph Howe's letters (Nos. CVI–CIX) prepared the way. Lord Falkland's failure in Nova Scotia to imitate Sydenham's policy accelerated the development, and to his successor, Sir John Harvey, were sent dispatches in which the principles of full responsible government were laid down (Nos. CXLIII, CXLIV). Nova Scotia and New Brunswick passed through a comparatively uneventful history to their full self-government.[2]

In Canada, however, there were after the act of union eight years of experimenting, and it was not till the arrival of Lord Elgin as governor-general that Canada had a system of cabinet government in full working order. Elgin received similar instructions to those given to Sir John Harvey. With these as a working scheme he faced immediate issues and with him responsible government triumphed. His correspondence (Nos. CXLV–CLV) illustrates his purpose and throws light on the difficulties which he encountered. Earl Grey summed up his rule in Canada: 'In conformity with the principles laid down, it was Lord Elgin's first object in assuming the government of the province to withdraw from the position of depending for support on one party into which Lord Metcalfe had, by unfortunate circumstances, been brought. He was to act generally on the advice of his executive council and to receive as members of that body those persons who might be pointed out to him as entitled to be so by their possessing the confidence of the

[1] Earl Grey, *The Colonial Policy of Lord John Russell*, vol. i. p. 17 (2 vols., London, 1853).
[2] See Martin, C., *Empire and Commonwealth*, pp. 148–226 (Oxford, 1929).

assembly. But he was careful to avoid identifying himself with the party from the ranks of which the actual council was drawn, and to make it generally understood that, if public opinion required it, he was equally ready to accept their opponents as his advisers, uninfluenced by any personal preferences or objections.'[1] New difficulties, however, continued to arise in the workings of the Canadian constitution which led to and hastened federation.

Cabinet government as understood in Great Britain and as set up in Canada by Lord Elgin implies government by party. Two strong parties are its usual and best guarantee for success. In Canada the number of parties was legion—Upper-Canadian reformers, Upper-Canadian conservatives, French-Canadian radicals, French-Canadian conservatives, with a small but efficient group that carried on the extreme tory traditions of Upper Canada. It was impossible to combine parties of the same name, for common names did not imply a common political platform. Coalition government was the result with all the weaknesses to which such a form of government is heir. Then the religious and racial difficulties did not tend to disappear under the influence of parliamentary and election oratory. The issues at stake too were often only local, in which Upper Canadian and Lower Canadian had no common interest. These difficulties led to serious consequences. We find two premiers, one French, one English. Before long it became almost a constitutional convention that a ministry must command a majority in English-speaking as well as in French-speaking Canada. The whole scheme of government was vitiated by anomalies, and ministries quickly followed one another to defeat. Then came the party cry of 'representation by population', which threatened to overthrow the pact of the act of union. The civil war in the United States and the 'Trent affair' helped to bring into relief the weakness of government in Canada, and finally the Canadian government fell back on the untried scheme suggested in Lord Durham's *Report*—a federation of British North America.

Large extracts have been made from the confederation debates in the Canadian parliament (No. CLXXI), and the various preliminary agreements and resolutions before the passing of the British North America Act have been printed in full (Nos. CLXI–CLXIV; CLXVII–CLXIX; CLXXII). These extracts illustrate as far as space would allow every point of view. The history can be followed in Pope, *Confederation Documents* (Toronto, 1895), and *Memoirs of Sir John Macdonald* (2 vols., 1894); J. H. Gray, *Confederation of Canada* (Toronto, 1872); R. G. Trotter, *Canadian Federation* (London, 1924); A. G. Doughty, 'Notes on the Quebec Conference, 1864', *Canadian Historical Review*, i, pp. 26 ff.).

[1] Earl Grey, *op. cit.*, p. 213.

## CXXV

## SYDENHAM'S SPEECH TO THE CANADIAN PARLIAMENT

[Trans.: *Imperial Blue Books relating to Canada*, 1841–3, vol. xiv.]

15*th June*, 1841.

Honourable Gentlemen of the Legislative Council, and Gentlemen of the House of Assembly.

I have deemed it right to assemble you at the earliest period which the circumstances of the Province and the duties imposed upon me by the Imperial Act for the Union of the Canadas, under which this Legislature is constituted, have admitted; and it is with sincere satisfaction that I now meet you to deliberate on the great and important interests committed to our charge.

A subject of Her Majesty, an inhabitant of this Province,[1] has been forcibly detained in the neighbouring States charged with a pretended crime. No time was lost by the Executive of this Province in remonstrating against this proceeding, and provision was made for insuring to the individual the means of defence pending the further action of her Majesty's Government. The Queen's Representative at Washington has since been instructed to demand his release. Of the result of that demand I am not yet apprised, but I have the Queen's commands to assure her faithful subjects in Canada of her Majesty's fixed determination to protect them with the whole weight of her power.

Arrangements were completed during the course of last summer by which, under the directions of the Treasury, the rates of Postage between all parts of this Colony and the United Kingdom were greatly reduced; and a more speedy and regular conveyance of letters between different parts of this Province has since been established by arrangements made by the Deputy Postmaster-General under my directions. A commission has been appointed by me to inquire into and report upon the Post-office system of British North America, and I confidently anticipate that the result of its labours will be the establishment of a plan securing improvements in the internal communication by post within the Colony equal to those which we have already obtained in the communication with the mother-country.[2]

Many subjects of deep importance to the future welfare of the Province demand your early attention, upon some of which I have directed bills to be prepared, which will be submitted for your consideration.

Amongst them, first in importance at the present juncture of affairs is the adoption of measures for developing the resources of the Province by well-considered and extensive public works. The rapid settlement of the country—the value of every man's property within it—the advancement of his future fortunes are deeply affected by this question. The improvement of the Navigation from the shores of Lake Erie and Lake Huron to the Ocean—the establishment of new internal communications in the inland districts are works requiring a great outlay, but promising commensurate returns. To undertake them successfully large funds will undoubtedly be required, and the financial condition of the Province, as it stands at present, would seem to forbid the attempt. But I have the satisfaction of informing you that I have received authority from Her Majesty's government to state that they are prepared to call upon the Imperial Parliament to afford their assistance towards these important undertakings. In the full belief that peace and tranquillity will be happily re-established in this province, under the constitution settled by Parliament, and that nothing but a relief from its most pressing difficulties is wanting to its rapid advancement to prosperity, they will propose to Parliament, by affording the guarantee of the Imperial Treasury for a loan to the extent of no less than a million and a half sterling, to aid the Province, for the double purpose of diminishing the pressure of the interest on the public debt, and of enabling it to proceed with those great public undertakings whose progress during the last few years has been arrested by the financial difficulties. I shall direct a measure to be submitted to

[1] See Scrope, *op. cit.*, pp. 224 ff.
[2] Smith, *History of the Post Office in British North America*, pp. 212 ff.

you embracing a plan for this purpose, and I shall lay before you, for your information and that of the people of Canada, extracts from the despatches which convey to me this most gratifying assurance.

In immediate connexion with the outlay of capital upon public works is the subject of emigration and the disposal and settlement of the public lands. There exist within this Province no means so certain of producing a healthy flow of immigration from the mother-country, and of ultimately establishing the immigrant as a settler and proprietor within the Colony, as the power of affording sure employment for his labour on his first arrival. The assistance of Parliament for the public works which may be undertaken here, will in great measure provide for this; but with a view further to aid immigration, I am authorized to declare to you that Her Majesty's government are prepared to assist in facilitating the passage of the immigrant from the port at which he is landed to the place where his labour may be made available, and that a vote of money for this purpose will be proposed to the Imperial Parliament. The conditions which Her Majesty's government attach to this measure will be submitted to you at the same time that I shall draw your attention to a scheme for the settlement and disposal of the public funds.

It appears highly desirable that the principle of local self-government, which already prevails to some extent throughout that part of the Province which was formerly Upper Canada, should receive a more extended application there, and that the people should exercise a greater degree of power over their own local affairs. I have directed a measure upon this subject to be submitted to you, and I solicit your earnest attention to the establishment of such a form of local government for those districts of the Province which are unprovided with it, as may ensure satisfaction to the people whilst it preserves inviolate the prerogative of the Crown, and maintains the administration of justice pure from party and popular excitement.

A due provision for the education of the people is one of the first duties of the State, and in this Province, especially, the want of it is grievously felt. The establishment of an efficient system by which the blessings of instruction may be placed within the reach of all is a work of difficulty; but its overwhelming importance demands that it should be undertaken. I recommend the consideration of that subject to your best attention, and I shall be most anxious to afford you in your labours all the co-operation in my power. If it should be found impossible so to reconcile conflicting opinions as to obtain a measure which may meet the approbation of all, I trust that at least steps may be taken by which an advance to a more perfect system may be made, and the difficulty under which the people of this Province now labour may be greatly diminished, subject to such improvements hereafter as time and experience may point out.

Gentlemen of the House of Assembly,

The financial accounts of the Province will be immediately laid before you, and I shall direct the estimates for the public service to be submitted to you with the least possible delay. I rely upon your co-operation in the financial measures which it will be my duty to propose to you for taking advantage of the assistance which her Majesty's Government propose to afford, and for carrying into effect the public improvements which are deemed most desirable. I shall earnestly endeavour that whatever you may appropriate for this latter purpose shall be economically employed and rendered effective.

Honourable Gentlemen and Gentlemen,

In your wisdom and prudence I confide for the regulation of the different important matters which must necessarily come before you. Canada, united under a constitution which the Imperial Legislature has framed with an earnest desire for the welfare of this portion of the British Empire, cannot fail to prosper under prudent and sage counsels. The generous aid which I have already announced to you, the determination which I am also empowered to state upon the part of the Government to devote annually a large sum for the military defences of the Province—the fixed and settled determination which I have the Queen's commands to declare that her North American possessions shall be maintained at all hazards as part of Her Empire, are pledges of the sincerity with which the mother-country desires to promote the prosperity of Canada, and to assist in the well-working of the new institutions which it has established. The eyes of England are anxiously fixed upon the result of this great experiment. Should it succeed, the aid of Parliament in your undertakings, the confidence of

British capitalists in the credit you may require from them, the security which British people will feel in seeking your shores, and establishing themselves upon your fertile soil, may carry improvement to an unexampled height. The rapid advance of trade and of immigration within the last eighteen months, afford ample evidence of the effects of tranquillity in restoring confidence and promoting prosperity. May no dissensions mar the flattering prospect which is open before us. May your efforts be steadily directed to the great practical improvements of which the Province stands so much in need, and under the blessing of that Providence which has hitherto preserved this portion of the British dominions, may your counsels be so guided as to ensure to the Queen attached and loyal subjects, and to United Canada a prosperous and contented people.

## CXXVI

## SYDENHAM TO HIS BROTHER

[Trans.: Scrope, *op. cit.*]

*28th August*, 1841.

* * * * * *

My last feat has been to carry the Municipal District Bill for Upper Canada, word for word after my own ordinance for the Lower Province; thereby not only giving the complement to the Union (for you know I always declared that without such institutions the Union could not work), but setting up my own particular legislation by the sanction of the United Parliament. The bill has passed both Houses, and I proceed to-day in state to give it the royal assent, in order to make perfectly sure of its being law, even if I were to quit this world the day after. But the trouble I have had to do this has completely justified all my anticipations of the next to impossibility of our getting such a measure through a Provincial Assembly, and the utter hopelessness of the effort, but for the course which I followed of dictating it, whilst I was dictator, for one part of the province first. One party hated the measure because it was to give power to the people; another because it placed that power under wholesome control by the Crown; a third because it deprived the members of the Assembly of all their past power of jobbing. But I beat them all three, to the utter astonishment of the spectators; and at last carried my work, the Bill, the whole Bill, and nothing but the Bill, by a majority of forty-two to twenty-nine, or more than one third. I have now accomplished all I set much value on; for whether the rest be done now or some sessions hence, matters little. The five great works I aimed at have been got through—the establishment of a board of works with ample powers; the admission of aliens; a new system of county courts; the regulation of the public lands ceded by the Crown under the Union Act; and lastly, this District Council Bill.

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## CXXVII

## RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF CANADA, 1841[1]

[Trans.: *Journals of the Assembly of Canada*, 1841, pp. 480 ff.]

I. Robert Baldwin's Proposals.

1. That the most important as well as the most undoubted of the political rights of the people of this Province is that of having a Provincial Parliament for the protection of their liberties, for the exercise of their constitutional influence over the Executive Departments of their Government and for legislation upon all matters which do not, on the grounds of absolute necessity, constitutionally belong to the jurisdiction of the Imperial Parliament, as the paramount authority of the Empire.

2. That the head of the Provincial Executive Government of the Province being within the limits of his Government, the representative of the Sovereign, is not constitutionally responsible to any other than the authorities of the Empire.

3. That the representative of the Sovereign for the proper conduct and efficient

[1] These resolutions were proposed by Robert Baldwin on September 3, 1841. Harrison's amendments, which were carried, are generally assigned to Sydenham's own pen.

disposal of the public business is necessarily obliged to make use of the advice and assistance of subordinate officers in the administration of his Government.

4. That in order to preserve that harmony between the different branches of the Provincial Parliament which is essential to the happy conduct of public affairs the principal of such subordinate officers, advisers of the representative of the Sovereign, and constituting as such the Provincial administration under him as the head of the Provincial Government, ought always to be men possessed of the public confidence, whose opinions and policy harmonizing with those of the representatives of the people, would afford a guarantee that the well understood wishes and interests of the people, which Our Gracious Sovereign has declared shall be the rule of the Provincial Government,[1] will at all times be faithfully represented to the head of that Government, and through him to the Sovereign and Imperial Parliament.

5. That as it is practically always optional with such advisers to continue in or retire from office at pleasure, this House has the constitutional right of holding such advisers politically responsible for every act of the Provincial Government of a local character, sanctioned by such Government while such advisers continue in office.

6. That for the like reason this House has the constitutional right of holding such advisers in like manner responsible for using, while they continue in office, their best exertions to procure from the Imperial authorities the exercise of their right of dealing with such matters affecting the interests of the Province as constitutionally belong to those authorities, in the manner most consistent with the well understood wishes and interests of the people of this Province.

II. S. B. Harrison's Amendments to Baldwin's Proposals.

1. That the most important, as well as the most undoubted, of the political rights of the people of this Province is that of having a Provincial Parliament for the protection of their liberties, for the exercise of a constitutional influence over the Executive Departments of their Government, and for legislation upon all matters of internal Government.

2. That the head of the executive Government of the Province, being within the limits of his Government the representative of the Sovereign, is responsible to the Imperial authority alone; but that, nevertheless, the management of our local affairs can only be conducted by him, by and with the assistance, counsel and information, of subordinate officers in the Province.

3. That in order to preserve between the different branches of the Provincial Parliament that harmony which is essential to the peace, welfare and good Government of the Province, the chief advisers of the representative of the Sovereign, constituting a Provincial administration under him, ought to be men possessed of the confidence of the representatives of the people, thus affording a guarantee that the well understood wishes and interests of the people, which our Gracious Sovereign has declared shall be the rule of the Provincial Government, will, on all occasions, be faithfully represented and advocated.

4. That the people of this Province have, moreover, a right to expect from such Provincial Administration, the exertion of their best endeavours that the Imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well understood wishes and interests.

## CXXVIII

## STANLEY'S INSTRUCTIONS TO BAGOT, OCTOBER 8, 1841[2]

[Trans.: *Bagot Papers* (Canadian Archives).]

Downing Street
8th October 1841.

Sir,

I am well assured that it must be unnecessary for me to impress upon you the magnitude and importance of the interests, which Her Majesty has been pleased to entrust to your charge, in appointing you to the high office of Governor General of British North America.

[1] See No. CXI.

[2] For a study of Bagot's government, see Kennedy, *The Constitution of Canada*, (Oxford, 1923); Morison, J. L., *Sir Charles Bagot: An Incident in Canadian Parliamentary History* (Kingston, 1912); Glazebrook, G. de T., *Sir Charles Bagot in Canada* (Oxford, 1929); Martin, Chester, *Empire and Commonwealth* (Oxford, 1929).

The duties of administering a Government so extensive, at all times sufficiently arduous, are peculiarly so at the present juncture, when, in addition to difficulties arising out of the State of the Frontier, and the unsettled condition of our relations with the United States of America, a great change has recently been wrought, and a great experiment is actually in progress, affecting the Constitution and internal arrangements of the great Province over which you are called upon more immediately to preside. Upon your firmness, judgment, moderation, and temper, will depend, in a great measure, the success of that experiment of which the failure could not but lead to consequences the most disastrous, while its favourable and harmonious working may be expected to have the effect of rapidly developing the vast resources of British North America,—of strengthening the feelings of loyalty to the Crown, & attachment to British Connection, which, I am persuaded, actuate the vast majority of the People of Canada, and of keeping for many years to come, a free, a happy, and an improving People in close connection with and cheerful dependence upon the British Empire. In discharging your important duties, the Queen commands me to assure you that Her Majesty will, on all occasions, be prepared to place the most favourable construction upon the course which, in the exercise of your judgment, you may feel called upon to pursue; and while I invite on your part the most unreserved communication of your views and opinions upon every question which may arise, I assure you that you may rely upon the most cordial support, which it may be in my power to give, consistent with my public duty, to your measures and your authority.

I need not point out to you that in assuming the Government of Canada, you are placed in circumstances very different from any of your Predecessors. You are about to administer the affairs of a Province, legislatively united after a separation of fifty years, during which it was impossible but that separate interests, arising out of local situation, different origin, and other causes to which I will not advert, must necessarily have sprung up, and engendered rivalries and jealousies, which have been most unhappily aggravated by events of late years, and which it will be your first and chief duty, by every means in your power, to allay and to extinguish.

You cannot too early, and too distinctly give it to be understood that you enter the Province with the determination to know no distinctions of National origin, or Religious Creed; to consult, in your Legislative capacity, the happiness, and (so far as may be consistent with your duty to your Sovereign and your responsibility to her Constitutional advisers) the wishes of the mass of the Community; and, in your Executive capacity, to administer the Laws firmly, moderately, and impartially. You will invite to aid you, in your labors for the welfare of the Province, all Classes of the Inhabitants; you will consider it your bounden duty to be accessible to the representations, and prepared to listen to the complaints, or the statements of the views of all; and the only Passports to your favor will be, Loyalty to The Queen, attachment to British connection, & an efficient & faithful discharge of Public Duty.

You will give every encouragement in your power to the extension, within the Province, of Religious Education, and of secular Instruction, and you will not fail to bear in mind, that the habits & opinions of the People of Canada are, in the main, averse from the absolute predominance of any single Church; and that, while the Churches of England & of Scotland are by Law established & endowed, and must be steadily upheld and anxiously cherished, the Church of Rome also, to which a large portion of the Population belongs, is recognized by the Law, and secured in the enjoyment of Rights, which you will be bound to protect, and that the co-operation of Wesleyan Methodists and Protestant Dissenters is not to be refused, or discouraged by the Executive.

In Civil matters, it must be your policy to seek to withdraw the Legislature, and the Population generally, from the discussion of abstract & theoretical questions, by which the Government of Canada, in former times, has been too often and too seriously embarrassed, to the calm & dispassionate consideration of practical measures for the improvement and advancement of the internal prosperity of the Province. In maturing measures of this description, you will endeavour to avail yourself of the advice & services of the ablest Men, without reference to distinction of local party, which, upon every occasion, you will do your utmost to discourage; and, in framing them for the consideration of the Provincial Legislature, you will endeavour to present them in the form in which they are most likely to be favourably received by the House of Assembly.

I do not, of course, intend to institute a precise analogy between the functions of that House, & those of the House of Commons; but I should strongly impress upon you my opinion, that, in matters purely Domestic, or where you are not bound, either by absolute Instructions, or by a sense of the paramount duty which you owe to Imperial interests, it would be matter of great regret, that measures should be repeatedly & deliberately affirmed by large Majorities of the Assembly, & subsequently rejected by the Legislative Council. Your efforts will, on all occasions, be directed to promoting & maintaining harmonious action between the two Branches of the Legislature. Questions may undoubtedly arise, on which you may feel it absolutely inconsistent with your duty to sanction measures approved by one, or even by both Houses, but I would hope that they may be of very rare occurrence; and that, when they arise, you may be enabled, temperately and firmly, to reconcile the performance of your duty, upon your responsibility to the Crown, with that respect which, I am sure, you will be, on all occasions, desirous of showing to the expressed wishes of the Representatives of the People.

And, in this respect, the difficulties of your position will, I trust, have been materially diminished by the provisions of the Act of Union, which have removed from discussion many of the questions, which were formerly sources of embarrassment & misunderstanding. Such, for example, are the Settlement of the Civil List,—the Surrender of the Crown Revenues,—the appropriation of the Clergy Reserves,—and the important provision, which, following the analogy of the British Parliament, prohibits the House of Assembly from entertaining any Money Vote, except upon the recommendation, officially signified, of the Crown.

Subsidiary to, and closely connected with the last provision, is a subject which was, I think wisely, left by Parliament for the consideration of the Provincial Legislature,—the Establishment of local Bodies, with a limited power of Taxation for local purposes, formerly defrayed out of the general Revenues of the Province. An Ordinance was passed for this purpose by Lord Sydenham for the Lower Province, which has since been extended, by an Act of the United Legislature, over the whole of Canada. You will carefully watch the progress & the result of this important change. Alterations in the details of the measure may be proved by experience to be necessary, and you will, in that case, give your Assent to any well-considered modifications, which the Legislature may deem likely to tend to its more successful working, but you will discourage any attempt at hasty legislation on a subject, which peculiarly requires the test of time & experience.

. . . . . .

I have the honour to be, Sir,
Your most obedient,
Humble Servant,
STANLEY.

## CXXIX

### BAGOT TO STANLEY, FEBRUARY 23, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Confidential
The Lord Stanley

Kingston
23rd Feby. 1842

My Lord,

As six weeks have now elapsed since my assumption of the Government of this Province, your Lordship will naturally expect from me a statement of my opinion as to the general aspect of its affairs and the probability of a tranquil and prosperous administration of its Government. I have hitherto abstained from writing on the subject from an unwillingness to risk misleading your Lordship by views formed on insufficient grounds—and if on many points I am still unable to speak with confidence, your Lordship will, I trust, excuse it in consideration of the short time yet allowed me for observation.

In my despatch of the 12th Ulto. No. 1, I informed your Lordship that I found the Province in a state of perfect tranquillity. I am happy to say that this tran-

quillity has continued, and every day confirms my belief that from internal disaffection or disloyalty we have at present scarcely anything to fear. You will observe that the Addresses which I have transmitted to the Colonial office from time to time, include every district and almost every considerable place in Western Canada—that in almost all, sentiments of Loyalty to the Queen and attachment to the Mother Country are strongly expressed, and that a very considerable number contain an approbation of, and concurrence in, the policy which in obedience to the Queen's commands I have announced my intention to pursue—namely to administer this Govt. with impartiality and justice and without regard to distinctions of natural origin or religious creed.

From the Lower Province but few Addresses have been received. The practice of presenting Addresses to a new Governor never prevailed among the French Canadians to the same extent as in Western Canada, and late events have naturally rendered the practice still more infrequent. The Address from Quebec may nevertheless be appealed to as evincing decided improvement in public sentiment in that part of Canada, and as a first step towards an obliteration of the barrier which has so long divided English and French races.

I do not of course intend to represent that discontent and disunion have ceased to exist, or that all parties have shown the same laudable spirit of oblivion of past differences. The parties into which men have been divided in this Province have for many years been too distinctly marked—and their passions during the struggle have been far too strongly excited—to admit of such a result at this early period. But I hope and believe that there is a disposition to discuss politics in future more on public and less on personal grounds—and to cease from the agitations of theoretical principles which, leading to no practical results, were intended only as the Watchword and Shibboleth of a party.

It appears to me that the error of previous governments in Canada, has been the narrowness of the foundations on which they have been based. The political Parties which exist in this Country, resemble but in a very small degree those two great parties which during the last century and a half have governed the destinies of Great Britain. While each of those parties, while combining various shades of political opinions, are yet united in a compact body under an acknowledged leader, and while the followers of each are prepared in their Parliamentary career to merge minor differences for the sake of uniformity on cardinal principles, there is here no party comprising a majority of the Representative Body—there are no Leaders who can reckon on the support of more than few followers, and there is no appreciation of the necessity of concert and co-operation among those whose opinions coincide on general matters. Hence an attempt to govern by a single party and to confer on them the whole patronage and power of the Government has invariably united all parties in opposition, and has led to the defeat of the Government in the popular branch of the Legislature.

In the present Executive Council the attempt was first made to combine the Representatives of several shades of opinions—and accordingly its heterogeneous character was one of the common topics of attack adopted against it during last Session. I am disposed, however, to believe that this very character formed an essential element of its strength—Had those against whom Mr. Baldwin protested been removed from the Council, the Government would probably have lost the support of the great bulk of the English Members from Eastern Canada, while a similar exclusion of those in whom he expressed his confidence, would have ensured the opposition of the popular Party from Western Canada. By the combination of the two among whom there was really no essential difference of opinion, the support of a more extensive body in the Assembly was obtained, while no important principle was sacrificed. The chief opponents of the Government during the last Session were first the French Canadians—secondly a portion of the (so named) Compact party, and thirdly the ultra popular Section of the Upper Canadians. These parties, though differing entirely on all questions of principle, repeatedly united for the purpose of defeating or obstructing the Government on individual measures.

I am not without hopes that so unnatural an alliance may be broken up before the next Session. Of the French party, several of the principal Leaders, M. Morrin for instance, and M. Huot of Quebec, and Mr. Chas. Mondelet of Montreal have, since the prorogation, accepted District Judgeships, and in my despatch of the 22nd Instant I have announced that M. Cherrier and Mr. Fisher—the first of French origin—the second of the French Party, have accepted silk gowns. This,

considering the determination with which they had resisted all approaches on the part of Lord Sydenham, looks like the commencement of a better feeling, and it may also be inferred from the altered tone of the principal French Paper the "Canadien," that they are not prepared to persist in an uncompromising and unreasoning resistance. So long as Lord Sydenham continued in the Government the personal feelings which they cherished against him as the author of the Union, might probably have kept them in opposition—but that difficulty removed, the peculiarity of their position on this Continent, and their habits and feelings would, I should think, lead them to ally themselves with the Government. Surrounded and outnumbered by a race of British descent, speaking a different language, following a different creed—bred up under a different system of law, and possessed at the same time of an energy of character and habits to which they can lay no claim, the French Canadians can scarcely avoid seeing that the natural Post is an alliance with the Government, and that by such an alliance alone can they hope to maintain their peculiar laws and privileges. I sincerely trust that they may take this view of the case, and no effort will be wanting on my part when I proceed to Lower Canada to wean them from what I feel to be a false and unsafe position.

From the Compact party I do not expect any very serious opposition. Their numbers in the House are small, although the respectability of their characters and the general superiority of their Education gives them weight. I cannot doubt that experience will have taught them to mitigate those exclusive views which formerly entailed upon them the dislike and distrust of the Country—and that their own good sense and their loyalty and attachment to British connexion will have convinced them that a factious opposition can profit them nothing, while it will risk all the permanent interests of the Country. Some exceptions no doubt exist, and some attempts have been made in recent Addresses to identify H.M.'s Govern and myself with this party—but the manner in which I have answered these Addresses, has effectually put a stop to the impression which it was endeavoured to create, that I was disposed to administer the Government on sectional principles.

Of the ultra popular party I can say but little. They are few in number, and with the exception, perhaps, of Mr. Baldwin, have little influence. While acting with the French Canadians, they were to a certain extent formidable—but if that party be detached from them, they would not be sufficiently numerous to embarrass the Government. Whether any of them contemplate ulterior objects in their attempts to popularize the Institutions of the Country, I am unable to say—but at any rate none of them have ventured to avow such objects, nor, did they avow them, would they obtain any support.

Such being, so far as I can judge, the state of parties, it seems fair to expect that no serious obstacle will be opposed to the Legislative action of the Govt. when the Provincial Parliament shall be called together. But on this point I shall be able to pronounce a more decided opinion after having visited Eastern Canada, and when the Session draws nearer.

In the mean time I can confidently assert that the Country has never during the last five years, been in so tranquil and prosperous a state as at present. The measures which have been adopted for carrying out public improvements and relieving the financial embarrassments, have infused a hopeful and contented spirit into the people which cannot fail to have the most beneficial effects. The Municipal Institutions recently established are in successful operation in Western Canada and, with a few exceptions, in Eastern Canada also. Public confidence has been so far re-established that the rate of interest on Government securities has fallen from 7½ and 8 per cent to 6 per cent. With the promised assistance of the British Government there will be no difficulty in procuring the necessary capital to complete the contemplated improvements which, for several years will afford employment for almost any number of Emigrants who may come out. In short, assuming that peace be maintained with the United States, I see no reason to doubt that a career of prosperity is open to this Province from which nothing but a perverse determination on the part of a few prominent individuals can turn it aside.

Your Lordship will gather from what I have said that my experience confirms the wisdom of the principles laid down for my Government in your Lordship's despatch of the 8th Octr. No. 2.[1] It will be my policy to extend and strengthen

[1] See No. CXXVIII.

the foundation of my Government by bringing forward the ablest men whom I can find of all parties—while I shall discourage, as much as possible, a reference to bygone dissensions and a renewal of past animosities. By this means I hope I may render my Government advantageous to this Country and acceptable to the Queen and the Imperial Legislature.

I have thus explained to your Lordship the views which I at present entertain of the affairs of Canada. I need scarcely say that in whatever way your Lordship may choose to make use of the information contained in it, this Despatch must be considered as Confidential. Any publication of the sentiments and intentions expressed in it would raise a clamour and opposition which would render nugatory all my efforts for the good Government of Canada.

I have, &c,
(Signed) CHARLES BAGOT.

## CXXX

## BAGOT TO STANLEY, JUNE 12, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Montreal
June 12th, 1842

My dear Lord Stanley,

I received on Sunday last your letter from Brighton of the 17th of May, which was very valuable to me, and I shall now await with patience the arrival of your despatches by the next mail.

In looking back to some of my last letters I can well conceive that they may have given you an impression, that I was only then beginning to feel the difficulties with which I am surrounded. Difficulties there are—God knows—and in plenty—but I foresaw many of them even before I left England, and I do not now feel that, in fact, they go much beyond my previous calculations. However, I beg of you to rest satisfied in your own mind that, whatever they are, or whatever they may become, they shall never make me despair, still less shall they 'fright me from my propriety'.

I have sometimes thought that notwithstanding my frequent private communications to you, I have never sufficiently explained in them what I am really about—what are my hopes—and what is my *policy*—if that which appears to me to be under the circumstances, only the dictates of common sense, and common prudence, can be dignified with so grand a word.

It is most desirable for your sake, and that of the Government, as well as for my own, that I should not leave you in the smallest doubt, or uncertainty upon this point, and that you should know exactly, what I am really doing, and what I am hoping to do—so that, si quid movisti rectius, you may tell me so, in the full assurance, that no overweening attachment to preconceived notions of my own, shall prevent my working out, to the best of my power, the main policy which you may prescribe.

When I left England, I had an opinion which five months residence in this Country has much tended to confirm, that, as Governor of it, I was about to be placed in a very peculiar position—a position in which my Predecessor did not, and my Successor could not stand; but upon the careful maintenance of which, at this moment, might depend the future well being and tranquillity of the Colony. I felt that, in fact, I was the first Governor who was called upon to put practically into operation, and endeavour to give effect to the great measure of the Union, and to work out the experiment of fusing and identifying so far as it might be possible, the very discordant elements to be reconciled by that irrevocable & unalterable Act—

The means which Lord Sydenham had resorted to, in order to carry and complete the measure, may have been absolutely necessary—but they involved a public, and something very like a private quarrel on his part with the whole mass of the French Inhabitants of Lower Canada—and it would have been totally impossible for *him* ever again to conciliate them, or indeed ever again to have met, with any prospect of success, another Parliament in this Country.—He therefore could not have effected the object.—I think that my successor would have quite as little chance of being able to do so.—He could not, as I accidentally can, treat *his* advent as a new starting point—a new era—and a new

chapter in the history of the Country.—When the time should come for his arrival, he would most assuredly find that, if the opportunity had been lost upon the first establishment of the Union, of endeavouring to do away, all the old-party exclusions and differences, which had existed previously to it, it would be too late for him to make the attempt—that the Country had relapsed into its old divisions, and subdivisions—and that the moment had passed, in which he could hope to extend, with safety, the patronage of the Government to all parties equally, without reference to past estrangements, and to take from all sides the best and fittest men for the public service.

My hope is that, circumstanced as I happen to be, I possibly may be able to do this.—At all events I cannot but think that it is upon this principle that I ought to endeavour to steer my course.—I do not in the least disguise from myself the great truth and justice of your own remark, that the mere associations of black with white does not always, nor necessarily, make a good grey; but the attempt to produce such a grey, whether it succeed or not, must I think after all that has passed, and at the particular crisis in which I find myself here, be the safest line. I may very likely fail—but I *may* also thus succeed in paralysing in some degree if not in breaking up the old parties.—At all events I deprive them of any reasonable ground of complaint that I act partially, or exclusively—and, if I fail, I shall certainly have placed Government in the right, and Party in the wrong—bien entendu, always a steady and immutable determination on my part perpetually to exclude from favour of any sort, those who may have borne arms or been otherwise mixed up in any treasonable practises against the Mother Country.

The efforts which I have been, and still am making upon the principle have not been discouraging.

* * * * * *

(Signed)
Charles Bagot.

## CXXXI

### S. B. HARRISON TO BAGOT, JULY 11, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Private &
confidential.

Kingston, 11th July 1842

My dear Sir Charles

I duly received your Excellency's "Private and Confidential" letter of the 2nd Inst, but from its finding me suffering under a very severe cold, and at the same time much engaged in attending the sittings of the Heir & Devisee Commission I have to apologise for having so long left it unanswered.

It appears to me that the period has arrived when the result of the negotiation amongst the French party may be judged of: it therefore becomes necessary to take a careful and dispassionate review of the present position of the Government. I should have felt it to be my duty to have touched upon this subject in a communication to Your Excellency, but I felt a difficulty in doing so without previous consultation with my colleagues. I thought moreover that as no step would be taken, no evil would result from delay; and some benefit might be derived, from having a better opportunity of judging what chance of success there was.

As, however, Your Excellency has determined at once to appoint Mr. Sherwood, and has required an expression of my sentiments upon the subject, I have determined to go fully and explicitly into the whole matter.

The importance of the subject would render a personal communication with Your Excellency at the present moment very desirable; but as I cannot leave the sitting of the Commission with due regard to the public service, I will put my views into writing.

I disclaim all personal considerations of every kind, and look only to the strengthening of your Excellency's Government in the House of Assembly. If one of the means of attaining that object be the taking in of Mr. Sherwood, I fully acquiesce in its being done—as indeed I am bound to do by the spirit of the understanding under which Mr. Hincks was called into the Government. Unless,

however, the accession of Mr. Sherwood forwards in some way the plan of gaining the French party, which I cannot see that it does (although I am aware that considerable negotiation has for some time been going on between that party and the leaders of the so-called conservative party of Canada West, but I believe with no result of political consequence) I do not look upon the appointment of that gentleman as of very material importance one way or the other—Indeed I consider it will have an injurious effect rather than a beneficial one.

I must, however, crave Your Excellency's patience whilst I express my views somewhat more at large. Looking at the present position of parties, it may I think be safely laid down that to obtain a working majority in the House of Assembly it is absolutely necessary that the Government should be able to carry with it the bulk of the French Canadian members. This moreover is nothing more than justice. The majority of the population ought surely not to be totally passed over in a representative form of Government. Nor, I may add, can any attempt to do so be attended with success. I feel in its full force the possibility of danger which is involved in this course, considering the character and present temper of that portion of the population of the Province. The evil is one, however, which springs from the Union and must be met and overcome. I believe that all danger may be averted by connecting with the French, a power sufficient to control their actions, and repress any tendency to take a course inconsistent with the relation of the Colony to the Mother Country—If we look at the state of parties in the House, it is obvious that it is the liberal party alone which has numbers sufficient to effect this object. The Conservative party is too small in number; and therefore when acting in conjunction with the French Party, they cannot take any decided course of their own: they can do no otherwise than follow in the wake of the French, and act merely as the master spirits of that party may dictate.

That I am right in this view, is shown by the course adopted during the last session,—when the Conservative party acting in concert with the French proceeded in a course which was anything but conservative; and the only opposition to it emanated from the reform party:—the influence of which was ultimately sufficient to prevent an evil which at one time appeared to assume a threatening aspect.

There is no disguising the fact that the French members possess the power of the Country; and he who directs that power, backed by the most efficient means of controlling it, is in a situation to govern the Province best.

The history of the last Session, and the consideration of the changes which have since occurred, must make it quite clear to every one, that the government does not now command a majority in the House of Assembly. A considerable addition of strength is necessary. It can only be obtained from the French party, because the whole Conservative party is not sufficient in number to give the required accession. Then again that party is broken up by broad differences of opinion. The conservatives of Canada West cannot agree with those of Canada East as to the course to be adopted towards the French—Again those of Canada West even do not entertain among themselves the same opinion upon the subject of joining with the existing Government. Besides this there is so great a Jealousy between the whole party and the liberal party, that I am afraid any attempt at amalgamation would seem to prove a failure. Whenever the time arrives for a decision upon this subject, it will be for Your Excellency to make an election. I very much fear that the two parties will not be found to work well together. A new party, "a moderate" party, may be formed, but I can hardly say that the late appointments would indicate to the Public that such is the course of proceeding.

At the time the arrangement was made by which Mr. Hincks and a Conservative were to be taken into the Government, two plans were under consideration. The one went the whole length of attempting to carry the French in a body with the Government; to do which it was necessary to take in Mr. Baldwin. This is shown by the circumstance—which I have reason to believe is the fact—that the tie which exists between that gentleman and the French has hitherto prevented the efforts of Your Excellency from being successful. The other—which was a modified plan—sought the requisite assistance—from strengthening the liberal interests by taking in Mr. Hincks: acquiring Conservative influence by the adhesion of a conservative of Canada West: and obtaining French support by enlisting Mr. Cherrier or some influential Frenchman—the object being to obtain in the aggregate an effective working majority. In this latter modified scheme I acquiesced as being safe, and, if successful, sufficient

for the purpose required. Besides this, I saw the prudence of endeavouring to meet a possible reaction in favor of the conservative party, which might give it a future consequence not to be estimated by the present smallness of its numbers. I felt also that it was just to carry out to its full extent the principles of extension, not fall into the error which had so long been a just cause of complaint against the conservatives themselves, and had ultimately annihilated them as a party.

So far however as I am able to judge, the move has not been successful. On the contrary I cannot conceal from myself, that it has failed altogether. A portion of it—the appointment of Mr. Hincks and of Mr. Sherwood as the conservative, has been made, but no impression whatever has been made upon the French interest. It is true that some of the conservative party may have been detached from the French policy; but that will affect so few votes that it will be no material assistance: and perhaps I might be justified in doubting even this effect, when I find Mr. Sherwood wishing to stipulate that the Lower Canada Election question should be made an open question. Upon this point, I feel compelled to trouble Your Excellency with a few further remarks in another place.

The result of all this is, that in my opinion the Government as it at present stands is not constituted in harmony with the majority of the representatives of the people.—And I cannot hesitate a moment: indeed I should be neglecting an important duty did I hesitate to express to Your Excellency my deliberate conviction that such will be made manifest at the very earliest period of the session. A vote of want of confidence will be brought forward and carried. I consider the aspect this question assumes at the present moment as differing materially from what it did at the commencement of the last session. There were many circumstances of great weight which then operated on the minds of the members—I mean those of the reform party of Canada West,—for it was by their means, that the question was not carried last session,—which would not now have any weight to prevent their joining in such a vote. Taking these circumstances into full consideration, I feel assured I am correct in the supposition that such a vote would now be carried. The very appointment of Mr. Hincks and Mr. Sherwood would be made a subject of charge against the Government as affording ground for the want of confidence.

With the view of giving Your Excellency the means of judging of the grounds upon which I have felt myself bound to come to this conclusion I have inclosed a list of the members with the way in which I have supposed they will vote upon the question. This although not of course accurate, may I think be safely relied upon for general results. I have, as Your Excellency will perceive, framed it upon the supposition that the Conservatives will support the Government. If they do not—then *a fortiori* will the same result follow.

Supposing then the question carried, I who introduced, and all who voted for the resolutions[1] of last session would be bound to bow to the decision of the House. Your Excellency would then have to determine what course you would adopt. You would either have to form an administration in accordance with the majority—that would result in taking in the French party with Mr. Baldwin —in fact adopting the very plan I have already shown to have been under consideration—or throw yourself on the Country and seek relief by a dissolution. I do not for one moment suppose it possible to resort to the old system of Government irrespective of the views of the House of Assembly, because the consequence of such a course would be fearful in the last degree.

The question would rest therefore between forming an administration such as I have supposed, and a dissolution. So far as it may be possible to judge of coming events, I think Your Excellency would be led to adopt the first course. A dissolution in the present state of the country just recovering from its difficulties, and requiring tranquillity more than anything else, would be an evil of a gigantic character under any circumstances; and when—as it appears to be admitted on all hands—no material change would be effected, it would be an act of folly as well as an evil.

If therefore I am right in my reasoning, and Your Excellency will be obliged to take the course indicated, under circumstances which will render it difficult, if not impossible to exercise that controlling power which I look upon as essential, will it not be wiser to meet the difficulty at once whilst that controlling power is still in your hands,—and do that voluntarily which there is reason to be satisfied

[1] See No. CXXVII.

must eventually be done on compulsion? To this point I have given my earnest attention, and having arrived at a conclusion I should not be performing my duty if I did not state it. I shall do so, and then leave the subject in Your Excellency's hands for determination.

I therefore respectfully yet earnestly offer it as my advice to Your Excellency, that Mr. Baldwin and an individual of the French party, such as will answer the object, should be at once taken into the Government. In taking this course, Your Excellency will only be acting on the same principle which has already induced the appointment of Mr. Hincks and Mr. Sherwood; and if convinced that my views are correct, I feel satisfied Your Excellency cannot fail to see the subject in the same light that I do.

Not being in a situation to consult my colleagues on this point, I am compelled to offer this as my individual advice. I however do this the less reluctantly because the subject has already been mentioned before Your Excellency, and has been besides seriously considered at a former period amongst ourselves. There is therefore no member of the Government to whom it is new, or who is not in a situation to enter fully into its importance.

Entertaining these views, Your Excellency will easily see in what way it is, that I cannot consider Mr. Sherwood's appointment as of very material consequence. The reason why however I think the effect rather prejudicial, is that Mr. Sherwood's public career up to the present moment having been in direct opposition to the existing Government, and his having joined that Government being the first intimation the public have of any presumed change, great doubts of the sincerity of both parties will be created. In order to test the present existence of an acknowledgement in the principles of Responsible Government, many will be induced to vote for the want of confidence, who would not otherwise have thought it necessary to moot theoretical points.

It must be distinctly understood that in my estimate of the effect of Mr. Sherwood's coming into office, I assume that he comes with a perfect disposition and intention to co-operate with the existing Government in carrying out these principles to which it stands pledged to the Legislature and the Public. If it were possible to entertain a different opinion, the stipulation to make the Election question an open question would almost stagger me. To allow of that would be an act of suicide on the part of the members of the present Government. —A majority of the House, as parties are at present constituted, would vote for an election law—We who voted against it during last session should be obliged to maintain the same position. We should at once be placed in the false position of being in a minority upon a question maintained by some members of our own body. In such a contingency, the House would have good ground for want of confidence in us, and I do not see how we could continue in office on our own principles. I am however relieved from considering the practical effect of such a false step by the determination expressed by Your Excellency not to allow of the question remaining an open one. In that I most cordially agree. Indeed if any open questions upon points of a constitutional character be allowed, at all, it needs but very little penetration to perceive that disunion to a fatal extent in the administration will be the result.

Upon the very question under consideration, I last session gave way as regards my private feelings for no one more completely disapproved of the course which was adopted at those elections than I did—and voted against the law proposed by Sir A. McNab, upon what I conceived to be broad constitutional grounds.

I say nothing upon Mr. Sherwood's sentiments on the subject of Responsible Government—The Government will be held to that doctrine whoever may form the administration.

In the full confidence that Your Excellency will receive what I have said in the spirit in which it is respectfully offered; and attribute whatever of anxiety I may have shown upon the important subjects I have spoken of to its right motive—I will conclude by leaving the whole matter in Your Excellency's hands in the earnest hope that if upon examination Your Excellency should see reason to place confidence in the deductions I have attempted to draw, you will take such a course as will prove most beneficial to the Province.

I remain Your Excellency's
Most faithful & obliged
& obedient servant
S. B. Harrison.

## CXXXII

## W. H. DRAPER TO BAGOT, JULY 16, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Private and Confidential

Quebec 16 July 1842

My dear Sir Charles

Reflection on the subject which formed the principal topic of conversation with which Your Excellency honoured me yesterday morning has induced me to place in writing before you the opinions which I entertain and to which I was desirous of soliciting your attention.

It seems agreed on all hands that such a majority as is necessary to carry on public business in the Legislature can only be obtained through the members usually designated as the French party. In short that to make Your Excellency's administration successful and to prevent the embarrassment it might occasion you to have to reconstruct your Government—which the want of a majority would render indispensable—are results only to be obtained through that party.

It is at least equally certain that the appointment of any one individual of that party will have no other effect than the destruction of his influence with the French Canadians and will bring to your aid nothing but his single vote and the exercise of such talents for business as he may be possessed of.

Independently of these considerations when the numerical strength and influence of the French Canadians and the certainty that they have at present at least twenty-two votes in the House of Assembly are borne in mind it is little enough to say that they have reason to expect that they should have a place in the Council and hold office in the Executive Government.

There is a much stronger coherence and unanimity among the French party than in any other in the Province. The British party in Eastern—the Conservatives and the Reformers of Western Canada though each united on some general principles divide on a great variety of questions. The French on the contrary act as a body on almost every occasion and have consequently become of greater importance and possess more actual power than their numbers in the house would otherwise give.

The coalition formed at the opening of the last session between that party and Mr. Baldwin—and the subsequent return of Mr. Lafontaine for the fourth riding of the County of York on the interest and I may add nomination of Mr. Baldwin appear to oppose the great difficulty to obtaining their support unless they come to an understanding with him making them free to accept office without bringing him in also.

Without hazarding an opinion that such an arrangement could be certainly effected I think it at all events sufficiently probable to induce me respectfully to suggest for Your Excellency's consideration the propriety of making the trial. It is only by this means that Your Excellency can become fully aware of their intentions and resolves and thus know the extent of the difficulties with which you have to deal.

It can, however, hardly be supposed that they will make any decision without reference to or consultation with Mr. Baldwin—and assuming (which I am inclined to do) that he would consent to their taking office without him his opinion as to the terms which it would be proper to submit to Your Excellency on their part would materially weigh with if not govern them.

Mr. Baldwin has publicly and privately expressed his want of political confidence in certain members of the Executive Council—How far his declared views on that point may influence the determination of the party it is impossible for me to say. I am inclined to suppose however that I should be found the greatest difficulty and it is for this reason that I repeat what I have already stated to Your Excellency that I not only am ready immediately to tender my resignation —but my unhesitating opinion that the opportunity of securing the French party ought not to be lost upon any question affecting merely an individual officer of the Government. For I must not conceal from Your Excellency my strong apprehension—that since as at present constituted the Government cannot be carried on in the House of Assembly—Should the members of it feel called upon to resign in consequence of a defeat—Your Excellency would find demands more

difficult to meet advanced by a party flushed with success—than they would urge while victory is as yet doubtful.

It is true that in extremity the Government might resort to a dissolution—but I should be wanting in duty to Your Excellency were I not to express my entire conviction that such a step at this moment would be most ill advised and I firmly believe most prejudicial.

I do not suppose that any proposal short of bringing in two French Canadians into the Council would be successful—and there is only one office (Solicitor General East) at present vacant—This objection might be obviated by making the second party a member of the Executive Council without other office—but having a seat in one or other branch of the Legislature—This would not be inconsistent with English practice. The principal officers of the Government would still be in the Council with the addition of one or two holding no place.

It is not at all improbable that the oft-urged objections to the Union—the inequality of representation according to population—and to the legislation of the Special Council may be repeated when Your Excellency enters into communication with any of the French leaders—Should this be the case there will I apprehend be no insurmountable difficulty in meeting these questions—The obvious answer is that none of them are within the power of Your Excellency. As to the Union any representation affecting that measure must go to the Imperial Parliament—and will come but feebly from a party whose chiefs hold office under it—As to the second—the Union Act places the power of amendment in the hands of the Provincial Legislature. And for the third Your Excellency can justly say that the proper time for you to express any opinion will arise when the House of Assembly and Legislative Council have passed any measure to repeal or alter the ordinances of the Special Council.

Whether Mr. Sherwood's appointment would throw any additional obstacle in the way of this arrangement I am hardly prepared to say. From what I have heard him state I should incline to think as regards the French themselves it would not, though possibly as regards Mr. Baldwin it might—even this however if stated as a difficulty would be the easier obviated by my retirement—

The only remaining question is the possible contingency of the French party refusing office without Mr. Baldwin. I do not feel well able to give an unbiassed opinion on the Course to be pursued in that event. One thing I do not doubt at all and that is, that with the present House of Assembly you cannot get on without the French while it is necessary for me at the same time to declare frankly that I cannot sit at the Council board with Mr. Baldwin. My resignation will be immediate on my becoming aware of his appointment.

I need not, I trust, assure Your Excellency that even were I out of office you might rely on my support at least on all those measures which I think could receive the sanction of one of Your Excellency's well known political character. And if there should arise circumstances in which I could not concur with the propositions of the Government I should never be found in a vexatious opposition—On the contrary I am not without a hope that I could be of some service to Your Excellency while unconnected with the Government—and perhaps remove or at least diminish some of the too numerous embarrassments which exist at the present moment to the success of Your Administration.

Believe me
With the sincerest respect
Your Excellency's faithful servant
Wm. H. Draper.

## CXXXIII

## BAGOT TO STANLEY, JULY 28, 1842

Private & Confidential

[Trans.: *Bagot Papers* (Canadian Archives).]

Quebec
July 28th, 1842

My dear Lord Stanley,

The Parliament will meet on the 8th of September, and I have now to consider very seriously whether I shall, or shall not be able to command in it such a majority as is absolutely necessary for successfully carrying on the business of The Country.

Any coalition of the Ultra Reformers, or of the Conservative Party with the French Canadians would infallibly turn the scale against us; and unless I can secure the regular support of at least one of the different Parties, now more or less opposed to us, we may find ourselves defeated at the very opening of the Session, and possibly upon some direct question of want of confidence in The Ministry.

Upon the best calculation which I can make, such a question, if brought forward even as Parties are now arrayed, might be carried against us by a majority of from 5 to 6, to 9 or 10, and the consequence of such a vote, I have not the power of calculating.

The Parties which now divide the Country may be distinguished into, The friends and supporters of The Government . . . . I am not inclined to attach much importance to The Ultra Reform, and Radical Party, either as regards their numbers, or their influence—nor would it be safe to seek, nor perhaps even to accept any support from *them*.

The pure Conservatives of Upper Canada are, as you know, numerous, highly respectable, and entirely to be relied on, as regards British connection, but they are not represented by any large number of Members in the Assembly and cannot command more than 6 or 7 votes at the utmost.

The British Party in Montreal is of about the same, or somewhat less force in the House.

Looking therefore to the numbers of the French Canadian votes, (they amount to at least 22) as well as to their unanimity and coherence as a Party, there can be no doubt that, if their assistance could be obtained upon safe and reasonable terms, the problem would be at once solved, and possibly a much healthier state of things than has hitherto existed, be established for a length of time.

For my own part I should have no fear of admitting them, as a Party, into a share of the Government, so far as regards their supposed inveterate hostility to certain vital principles which are of course, immutable. I mean the questions of the Union—of the Special Ordinances—of the representation &c., &c. In the temper in which they now are, I have good reason to think that, without abandoning their own abstract notions upon these points, they would, if fairly admitted to that share in the Government to which, after all, they are, theoretically at least, justly entitled, be ready to consider them as now definitely fixed, and no longer subjects of discussion as first principles, however they might think that some of them were still susceptible of occasional, and perhaps in some respects, necessary modification hereafter.

The real difficulty however in the way of endeavouring to obtain their support and honest co-öperation from this important question lies, I have reason to believe, in the coalition which was formed, at the opening of the last session, between them and Mr. Baldwin, the late Solicitor General.

There is scarcely any extremity to which I should not be disposed to submit, nor beyond which I might not think it even prudent to incur, rather than see Mr. Baldwin again introduced into the Council—the immediate consequence of which would be, the entire, or nearly the entire dissolution of the present Ministry, and the certain loss of Mr. Draper, the present Attorney General for Upper Canada. But unfortunately the French Canadians feel so much bound in honour to Mr. Baldwin for his retirement last year from the Government on their account, that they would listen to no terms which did not either include him in the Executive Council, or to which he was not at least so far an assenting party as to give his sanction to their entry into it without him. Whether he would be content to be excluded provided that they were admitted I, of course, can have no means of ascertaining—but I think it not impossible that he might be.

The junction (and it already exists to a great degree) between the Reformers of Upper Canada, headed by Mr. Baldwin, and the French Canadians is that which in point of numbers, is most to be feared.

The junction of the Conservatives with the French Canadians, though formidable enough, would not be equally so as regards numbers, but it might eventually prove more so, from the disproportion in the relative strength of the two uniting Parties, as it would give to the French Canadians a superiority in the combination, which the Conservatives would not be able to control, while any coalition between the Reformers and the French, would effectually prevent the latter from having any such ascendency.

I believe this to be a tolerably correct view of the present state of things. If

I am right in it, it is pretty clear that whichever Party may join the French, they will, when combined, have it in their power either to overthrow the Government, as it is now carried on in the House of Assembly, and flushed with success, make demands upon me which, while the victory is yet doubtful, they would not urge—or, they will drive me to a dissolution of the Assembly, which would again let loose all the elements of discord in the Province at a moment when every hour of repose is of incalculable advantage to our chances of permanent tranquillity, and which whatever might be the issue as regarded other Parties, would certainly have the effect of increasing that of the French Canadians.

Do not for a moment imagine that while I see, as I think I do, the necessity of either now making friends and supporters of the French population, or of rallying, by the failure of the attempt, the rest of the United Province against them by openly demonstrating their total impracticability, and irreconcilable hostility to the established order of things, I shut my eyes to the great possible danger of the experiment, or to the very general feeling with which I know that I should have to contend both here and in England even if you should encourage me to make it—I shall know that I should make it in the very teeth of an almost universal feeling at home—possibly, (if I were to venture to act in such a case, as I should not be likely to do, upon my own opinion only) in opposition to a fixed and determined policy of your own—certainly in opposition to Lord Durham's recorded sentiments—and as certainly to Lord Sydenham's avowed practice—But I am nevertheless arriving fast at the persuasion, that the moment is come when this question must be determined one way or the other, and this Government be carried on, either in professed exclusion, and defiance of the Canadians of French origin, or by their admission to such a share in it, as they may be contented to receive, and the Mother Country may deem it safe and reasonable to give them.

I have, as you may believe, not entered into any—the slightest—negotiation with the French, either individually, or as a Body—the utmost that I have yet done in regard to them (and it has stood me in good stead) has been to appoint Mr. Vallières Chief Justice, and to offer the post of Solicitor General to Mr. Cherrier—insulated offers which have not, and which could not gain to me the Parliamentary support of the French as a Party, but which may have had the effect of showing my bienveillance towards them, and thus smoothing my path hereafter, in any negotiation which I might have to enter into with them for higher and more general purposes.

As I told you in one of my last letters, nothing is now to be gained by any offer to any single individual among them. By such offer I do not secure the Party, and I ruin the man who accepts it—In the construction of a new Ministry the French might, and certainly would pretend to a much larger share in it than I should be at all disposed to give them—When invited to adhere to one already formed, they might be somewhat more reasonable, but they would certainly expect two seats in the Council, and probably insist upon their being filled in deference to their own suggestion—They would, I have no doubt, require that Mr. Lafontaine should be brought into the Executive Council, and that prominent position should be given to Mr. Vigers. I think I have reason to know that they would try to go further, and would desire that Mr. Ogden should be removed from his office—These I suspect would be their lowest terms.

Be that however as it may, it is impossible to disguise from oneself that the French members of the Assembly possess the power of the Country and whoever directs that power backed by the most efficient means of controlling it, is in a situation to govern the Province most effectually. Whether the experiment of using that power, in the hope of being able to control it can be made with safety, is a question which I confess to you that I dare not trust myself to decide even in my own mind—Certainly I should never think of deciding it without the fullest previous consultation with, and most entire concurrence of yourself, and the Government at home—I have not the political courage to do it—and though I am well aware of the inconvenience of delay, and of the advantage which I might gain in making the attempt if ever it is to be made, at this particular moment, pray understand that I have no intention of doing more by this letter than entreating your careful consideration of the whole subject of it, and begging you to give me the result of that consideration, in the shortest form that you please (a single yea or nay would be sufficient) by the earliest opportunity that you have.

It is an immense question—But this—and many others, though perhaps of

equal magnitude, are the necessary consequences of the perhaps necessary Union, and must be grappled with, ere long.

Since I last wrote, I have received a very sensible and proper letter [1] from Mr. Harrison, about whose manner of receiving Mr. Sherwood's appointment I told you that I had some apprehensions—He puts aside all personal considerations, but urges strongly upon me the necessity of securing if possible, the assistance of the French as a Party—as indeed do Mr. Sullivan and Mr. Draper whom I consider as the Conservatives of my Council.

I have withheld for the present my offer to Mr. Duval.

(Signed)
CHARLES BAGOT.

## CXXXIV

## STANLEY TO BAGOT, SEPTEMBER 1, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Confidential

Downing Street
Sept. 1. 1842

My dear Sir Charles

Your letter[2] of the 28th of July was too important and the subject matter of it too difficult not to lead me to wish to obtain for myself, as well as for you, the best opinion I could, and I accordingly sent your letter to Peel, with a private letter of my own. I do not think that I can better possess you with the views he takes, than by sending you, I need not say in the strictest confidence, copies of our correspondence. I see that in my letter I have made the mistake of considering the House as composed of 80, instead of 84 members, but if I am right as to the numbers of the French party, that circumstance only strengthens my view of the case, as against your apprehensions. Since writing these letters I have seen Mr. Ogden, who sails by this Packet, and Murdoch, who has just left me after a very long interview. The former takes a more sanguine view of the matter than even I do; and is very confident that your Government, as at present constituted, can command a majority, under any circumstances, in the United Legislature: the latter, I am bound to say, is much less so, but he does not materially vary the numbers, and if you can obtain the attendance of your supporters, I cannot make out but that you must have under any circumstances a reasonable chance at best of a majority. Murdoch estimates the French Canadian party at 22, and the Radicals of the Upper Province at 14; making in all but 36. The Government strength he calculates at 30 (Mr. Ogden makes it nearer 40) and the Conservatives of both Provinces, that is the High party, at about 8, being a floating balance of some ten or so waiters on Providence or rather on Patronage; but whose support I should think you more likely to be able to obtain than your opponents, be they who they may. I do not mean to say that this exhibits the picture of a very strong Government, but I think it is a position in which there is no cause for despair. It is a fine opportunity for playing the game of Divide et impera; and Peel's opinions are the more valuable upon this point, because he has had no inconsiderable experience in playing the game which he recommends. I see that Murdoch leans to the adoption of the policy of admitting the French party into your Councils. I can see all the temptation held out by the plan in the way of personal ease and comfort in carrying on your Government, yet I cannot think that it ought to be adopted—not adopted, that is, until all other means have been tried, and until it is manifest to this Country and manifest to the Conservatives, and the supporters of British influence in Canada generally, that you cannot carry on the Government without the French party, and that you can carry it on through & by them. Do not mistake me. When I say the French party, I mean that party conducted by its present Leaders, and headed by men more or less implicated in the late Rebellion. You may ultimately be *forced* to take these men; but do not take them till the World shall see that you are so forced; and my hope and belief is that that necessity will never arise. You say, and I doubt not say truly, that the acceptance of office by Individual French Canadians, ruins the man, and does not

[1] See No. CXXXI. [2] No. CXXXIII.

conciliate the party. Be it so—yet I would try to multiply such instances. I think the example will be found catching—and my feeling as to the position of your Government is that it is holding the balance between two extreme parties, and, on its own principles, ready and desirous to obtain recruits from both. I think a steady pursuance in this line, and a conviction which you have already inspired, of your sincerity will diminish every day the difficulties of your position, and ultimately crown your labour with success. You will have a difficult cast to play in relation to the Amnesty; but I hope you will recollect that however popular such a step might be, it is justifiable only if you are convinced that the persons desirous of returning would either not have the will, or with the will, not the power to foment fresh discontent in the Province. I own that I should very much doubt your being in a position to take such a step with safety; and on such a subject, you will of course see that the members of your Government adopt & support your views.

* * * * * *

Believe me
dear Sir Charles
yours sincerely
STANLEY.

## CXXXV

## BAGOT TO LAFONTAINE, SEPTEMBER 13, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Government House,
Kingston, Septr. 13th 1842

Sir,

Having taken into my most earnest and anxious consideration the conversations which have passed between us, I find my desire to invite to the aid of and cordial co-operation with my Government the population of French origin in this province unabated, and have therefore not waited for the result of your deliberations but on the contrary have been considering how far I can possibly meet the views of those who have the confidence of that part of the population so as to make their accession to the Government satisfactory to themselves, and at the same time accompanied by that mutual confidence which can alone make it beneficial to The Country.

I have accordingly come, not without difficulty to the conclusion that, for such an object I will consent to the retirement of the Attorney General, Mr. Ogden, from the office which he now holds, upon its being distinctly understood that a provision will be made for him commensurate with his long and faithful services. Upon this retirement I am prepared to offer to you the situation of Attorney General for Lower Canada, with a seat in my Executive Council.

The office of Solicitor General in Lower Canada has long been kept vacant in the hope of some arrangement by which the object which I have always had in view might have been assisted, and I shall be happy to listen to your suggestion of the name of any Gentleman of British origin whose co-operation in the Government will aid us in the attainment of our common object.

I have reverted carefully and anxiously to your expressed wish of being joined in your adherence to the Government by a sufficient number of supporters to ensure the confidence of those whose interests you represent. I find that one of my own plans for the advantage of Lower Canada, viz. the distribution of a portion of too crowded population of your frontier settlements over a large extent of territory, may be made to coincide with your views—Mr. Girouard has been represented to me as a Gentleman possessing administrative faculties of a high order, and at the same time the confidence of his Countrymen. He can materially assist in forwarding my object in this respect, and I have therefore determined, if I should be successful in inducing you to accept my proposition, on offering to him the situation at present held by Mr. Davidson together with a seat in the Council, on the understanding that the latter Gentleman shall also be provided for in a manner suitable to his just pretensions, and that Mr. Girouard shall be elected by some constituency of The Assembly.

I have further determined to offer the confidential post of Clerk of the Council

to some Gentleman of your recommendation, and I would suggest that the reputation enjoyed by Mr. Morin or Mr. Parent would designate them as perhaps among the fittest persons for your recommendation.

Mr. Baldwin's differences with the Government having arisen chiefly from his desire to act in concert with the representatives of the French portion of the population, and as I hope these differences are now happily removed, I shall be willing to avail myself of his services.

Mr. Draper has tendered to me the resignation of his office. I shall always regret the loss of such assistance as he has uniformly afforded me, and shall feel the imperative obligation of considering his claims upon the Government whenever an opportunity may offer of adequately acknowledging them. This will leave the office of Attorney General with a seat in the Council at my disposal, and I am prepared to offer it to Mr. Baldwin.

The absence of Mr. Sherwood deprives me of the opportunity of ascertaining how far he might be willing to accede to this arrangement, or of knowing whether he is ready to fulfil one of the conditions of his appointment by obtaining a seat in The Assembly.

The disposal of his office must be left therefore as a matter for future consideration. From my knowledge of the sentiments entertained by all the Gentlemen who now compose my constitutional advisers, I see no reason to doubt that a strong and united Council might be formed on the basis of this proposition. In this persuasion I have gone to the utmost lengths to meet and even to surpass your demands; and if, after such an overture I should find that my efforts to secure the tranquillity of the Country are unsuccessful, I shall at least have the satisfaction of feeling that I have exhausted all the means which the most anxious desire to accomplish this great object have enabled me to devise.

(Signed)
CHARLES BAGOT.

## CXXXVI

## BAGOT TO STANLEY, SEPTEMBER 13, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Kingston
Sept. 13th 1842
at night

My dear Lord Stanley

It was matter of serious disappointment to me that I did not receive from you by the last mail, an answer to my private letter of the 28th of July—but I learn, by letters from your office, that, when the mail arrived, you were gone into the North, and you had probably not the time to answer me by the return of The Packet.

In the mean time the great question which I brought before you has decided itself.

I have not time before the departure of the mail to tell you all that has passed between Thursday last, when I opened the Parliament, and this morning, when all was brought to an unsuccessful close—You shall hear from me fully by the next mail.

Briefly then—I have been in negotiation with The French Canadians for Their admission, on a broad and liberal footing, into a share in the Government. Upon the meeting of The Assembly it was quite clear that, though I might have a small majority in the event of a motion of want of confidence in The Ministry being brought forward, I had no longer any chance of one which would enable me to carry my measures with any certainty through the Session—I turned to the French Canadians—I turned to them as a Race, and a people rather than as a Party, and put myself into direct communication with M. Lafontaine—I made him large offers—He hesitated, and asked for larger—I was hesitating in my turn, when, last night, I received a paper from The Council giving me their deliberate and unanimous opinion that, unless I was immediately successful, it was impossible that The Government, constituted as it was, could be carried on—They were right—I finally (this morning) made in writing a proposition offering The French 4 seats in the Cabinet, and the Clerkship of The Council, sacrificing

for this purpose Mr. Ogden, and Mr. Davidson, The Commissioner of Crown Lands, on the condition that they should have pensions commensurate with their long and good services—*All* has within these few hours been refused—Baldwin, whom I consented to accept if *they* insisted upon it, is, I feel sure at the bottom of all—His object is to drive me to break up The Government altogether, and reconstruct through him, a new one—

I must now of course fight on with the Council which I have as long as I can. God knows what will be the issue—I have yet to see what will be the effect upon the Lower Canadians when They learn, as they are at this moment doing in The Assembly, how abundantly large an offer Their leaders have rejected, and the honest spirit in which that offer was made —The offer itself, accepted or not, will raise a prodigious outcry against me in certain quarters— I care not for this —morally I still have gained by it—But I have not time to explain all this— I bespeak, till you hear from me again by the next mail, your confidence in the wisdom, and the necessity of the course that I have taken. I have no reason, even under present failure, to repent it.

McNab has been doing as much mischief as he could in every direction since his arrival. He is an intriguing, slippery unprincipled man—but I shall keep faith, and make as fair weather with him as I can. Trust him I never will—He too has been making a Royal speech, and it was delivered before mine. I enclose it for your amusement.

(Signed)
CHARLES BAGOT.

## CXXXVII

## BAGOT TO STANLEY, SEPTEMBER 26, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Govt. House
Kingston, 26 Sept 1842

My Lord,

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Various circumstances induced me to postpone the meeting of the Legislature to the latest period allowed by the law; I accordingly fixed it for the 8th of Sept. As the time approached, my Executive Council in a more formal manner urged upon me the expediency of admitting some French Canadians to my Govt. to which, on mature reflexion I could no longer offer sufficient reasonable objection. I felt satisfied that the distrust and ill will which had been engendered among the French Canadians by their long exclusion from a share in the administration of public affairs, would be dispelled by such a measure; that they would receive it as a boon with gratitude, and would give in exchange for it their support in the Legislature and their assistance throughout the lower province in carrying out the main provisions of the Union. Their leaders had already perceived that their opposition to the Union was fruitless, and that continuance of it would only deprive them of the advantages of that Act, and expose them to many evils consequent upon their resistance. Some of them were therefore ready to abandon their opposition, and to meet any reasonable overture on my part. The opportunity once lost, would not I was convinced, be soon, if ever renewed. I felt equally confident that this policy would meet with the support of the mass of British Reformers and moderate men of all parties in the Legislature and the Province; and that, if I succeeded in my attempt, I should have taken the first great step to consolidate the Union, to restore content to the Lower Province, without disturbing the tranquillity of the Upper and to lay the foundation of the permanent prosperity of Canada.

I knew, however, that I could not hope to succeed with the French Canadians as a race, and my object was to deal with them as such, and not as a mere party in the House, unless I could secure the services of men who possess their confidence and would bring to my assistance not only their own talents and some votes in the House of Assembly, but the good will and attachment of their race, and that I could not obtain such services unless I was willing to place the individuals in a position in my Council which would prevent them from feeling themselves a hopeless minority against a suspicious and adverse majority,— unless in fact, I admitted them on liberal and generous terms. I accordingly

sent for Mr. Lafontaine, the most talented and influential representative of the French Canadians in the H. of Assembly, to whom Lord Sydenham made his overture; and after several communications with him and my Council, I addressed to him, by the advice of the latter, a note . . . This recommendation of my Council presented to me in writing, was accompanied with a notification, that if I declined to make so large an offer they would feel themselves compelled to resign. Its tenor . . . is to offer to the party four out of the eleven seats in my Executive Council, admitting Mr. R. Baldwin, (altho' not a French Canadian) as a gentleman from whom the party could not conscientiously separate, and without whom they had expressed their determination not to accept of any terms.

This negotiation was necessarily deferred until the arrival of Mr. Lafontaine and the body of Members at this place for the opening of the Session, and was further delayed in order to await the arrival of the Mail from England, which might possibly have contained information for my guidance. On the assembling of the Members I found that my attempts at conciliation had proved unavailing—that my appointments had either estranged friends whom the parties had left behind, or had failed to inspire confidence among those whose support I sought to gain. The high Conservative party I ascertained had made overtures to the French Canadians, and the extreme opponents of the Government, and were prepared to combine with them in order to overthrow my Executive Council, heedless of the inconsistency of such a course, and of the difficulties in which its success would have placed me. The result, if a trial of strength had taken place, would with such a combination have been fatal to my Council; who would immediately have resigned, and fatal, I am confident, to the tranquil Govt. of the Province for some time to come. I had therefore the strongest reason for keeping my Council together as far and as long as I could do so advantageously and honourably.

With these views I did not hesitate to make the proposed offer. To my surprise and regret it was not accepted:—objections being raised to the principle of granting Pensions to the retiring Officers; and the negotiation was broken off. The debate on the Address in reply to my Speech from the Throne commenced; an amendment containing a direct expression of want of confidence was moved: and the discussion threatened to be very acrimonious, and to place almost insurmountable difficulties in the way of healing the animosities it would have created and of remodelling the Executive Council on safe principles, if the necessity for such a course should have arisen. Meanwhile I ascertained that the terms of my offer had not been made generally known to the French Canadian Members. I accordingly empowered one of my Council to read my letter to the House. The effect was instantaneous. The negotiation was renewed the next morning, the point at issue was compromised, and the arrangement was completed.

The sequel may be briefly told. The hostile amendment . . . was withdrawn: an echo to the Speech was almost unanimously voted, and the next night an address, expressing in the strongest terms the satisfaction of the House at the course which I had taken, was moved by a Member of the British party, and passed by a majority of 55 to 5 (all my Executive Council except one, staying away,) its only opponents being the leaders of the Ultra Conservative party, and Mr. Neilson, all of whom, had on the occasion acknowledged their disposition and their desire to admit the French Canadians to a share in the Govt.

It now remains for me to describe to yr. Lp. the immediate effects of my measure, and the results which I anticipate from it.

The House of Assembly has already expressed "its unmingled satisfaction" at the course which I have taken. From the principle of it there was not *one dissentient voice*. I may confidently state that the same feeling exists in the other branch of the Legislature. I have united the voices of seven eighths of the House of Assembly in present support of the Government—some defection must be expected, but none by which the Govt. will be at all weakened. I have met the wishes of a large majority of the population of Upper Canada and of the British Inhabitants of Lower Canada. I have removed the main ground of discontent and distrust among the French Canadian population; I have satisfied them that the Union is capable of being administered for their happiness and advantage, and have consequently disarmed their opposition to it. I have excited among them the strongest feeling of gratitude to the Provincial Government, and if my policy be approved by H.M.'s Govt. I shall have removed their chief cause of hostility to British Institutions, and have added another security for their

devotion to the British Crown. The lapse of five years, under the recent extraordinary circumstances of Canada, has created great change in the opinions and feelings of men placed in the position of the French Canadians. Those who never swerved from their loyalty and whose number I believe has been much underrated, feel grievously the hardship of being included in the same punishment of suspicion and disqualification with those upon whom it justly fell. These, on the other hand, finding themselves wholly unable to resist the power of Great Britain, have learned to consider how little they can gain by opposing her reasonable demands, and how much they may lose by resisting them. The result has been an earnest desire to recover the good opinion of the Mother Country, and to be restored to its confidence, in a manner consistent with the honour and the pride which their separate origin naturally inspires. The Union did not offer that occasion: it was imposed upon them without their being consulted, (for they had no representation in the Special Council) and without regard to their remonstrance.

The present crisis, however, has offered the occasion; I have seized it; and I cannot use terms too strong in expressing to yr. Lp. my conviction that the result will, without the least sacrifice of British interests, or the least danger to British Institutions in the Province, tend to establish and confirm the principles and main intentions of the Union, and thus conduce to make United Canada one of the most happy, contented, loyal and prosperous portions of H.M.'s Dominions.

There will, I am aware, be at first a great outcry here among a minority in both provinces. This will soon moderate. There was the same when I appointed two talented and irreproachable Canadians to the Bench in Lower Canada; but the same parties who then complained now declare that they have not, and never had, any objection to the admission of French Canadians, even into the Government. The change, I know, will be very unpalatable to those who approve of an exclusive system of Govt. and who wrongly imagine that any favour shown to their opponents is a total transfer of power and patronage into their hands. Great efforts will be made to convince the people and Govt. of Great Britain that by ceasing to maintain an exclusive system, I have abandoned all power of control; and the recent history of Canada has rendered it easy to create such an impression. If these are allowed to succeed my attempt will fail; and though I be permitted to proceed in it, my efforts will be paralysed. But if H.M.'s Govt. believe that I have not acted in this matter without due consideration and reflection;—if they will weigh the various feelings of interest, of prejudice, and of animosity which are likely to influence the opinions of individuals belonging to the province, against the opportunities which I, a Governor-General, possess of collecting and comparing the opinions of all parties,—against the absence of all interest on my part except for the welfare of the province—and against the sense of grave responsibility under which I have acted—they will not withhold from me their prompt sanction and their firm support, which are essential to the successful issue of my policy.

I have &c
Charles Bagot.

## CXXXVIII

## BAGOT TO STANLEY, SEPTEMBER 26, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Kingston
Sept 26th, 1842

My dear Lord Stanley,

I do not think that I have a syllable to add which is material to the intelligence conveyed to you in my public and confidential despatches by this mail—nor any further explanation to give, or argument to advance in defence of the great measure which I have thought it necessary and right to take.

Of the magnitude and importance of that measure I am fully sensible—and, to the best of my abilities, I have carefully considered all the consequences, whether for good or evil, which may flow from it—But I have satisfied myself—

1st. That this, or some other measure substantially the same in its effect, could no longer be delayed.

2ndly. That, if it had been forced upon me by a vote of The Assembly, it would have given, although not a majority, a sudden & therefore a dangerous ascendency in the Government, for the future, to The French Canadians, or have led to a violent disruption of The Union, with all its consequences.

3rdly. That, if it was to be done at all, it was to be done confidently,—largely—and by the instrumentality of those who alone could carry with them the general sentiment of their race.—

Such has been my fixed persuasion founded upon the calmest and most careful observation of The State of Parties, and of the Colony since I arrived in it.—I found The Union was not completed—Sydenham had effected the fiançailles—The Marriage, as He very well knew, must be the work of His successor—Every circumstance appeared to me to combine in suggesting that the moment was favourable for performing that ceremony. Accident forced upon me the necessity of immediate decision—and, upon my own responsibility, I have decided.

If I have judged wrong, and, as in your better judgment you may find good reason for doing, you and Sir Robert Peel disapprove of my course, let me urge upon you the expediency of immediately disavowing it by my public recall:—There is now no other course by which, if the step which I have taken is erroneous, it can be retraced. A new Governor General *might* do what I can not, dissolve the Present Assembly, and appeal to the Country as Head did.

I do not attempt to disguise that even that course would be full of hazard to the tranquillity—and perhaps to the eventual preservation of the Colony—But it seems to me to be the only one.

If, on the other hand, you acquiesce in the reasoning which has governed me, and are satisfied as to the position in which I was placed when called upon to act, I would ask you to give me all the assistance, and the measure the great additional effect which it is in your power to do by such an expression of your full concurrence in it, as I may be at liberty to announce in whatever way you may prescribe.

I can say no more. I must, and I am prepared to, stand or fall by the statement of all that has occurred, as it is made in my two despatches. If to fall, to fall without remonstrance, or complaint, and with unfeigned deference to the opinions of those who, in such matters, must have more knowledge and experience than I can be supposed to have.

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## CXXXIX

## BAGOT TO STANLEY, SEPTEMBER 26, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Confidential

Government House
Kingston 26 Sept. 1842

My Lord,

* * * * * *

I have stated that all my Executive Council recommended me to admit some French Canadians into my Government. No one was more strenuous in this advice than the most conservative and perhaps the ablest of its members, Mr. Draper, who being apprehensive that they would not come in without Mr. Baldwin, and being determined not to sit in the Council with that Gentleman, repeatedly tendered me his resignation in order to remove one obstacle to Mr. Baldwin's admission. It was no new opinion on the part of the Council; they had advocated it with Lord Sydenham; and when it suited his policy, he had adopted it but unsuccessfully.

I have given a general sketch of Lord Sydenham's policy—were I further to lift the thin veil of success which covers it, much of deformity would be found underneath. Towards the French Canadians his conduct was very unwise. He made enemies of them unnecessarily at a time when he should have propitiated them and diminished their objections to the Union. He treated those who approached him with slight and rudeness, and thus he converted a proud and courteous people, which even their detractors acknowledge them to be, into personal and irreconcilable enemies. He despised their talents, and denied their

official capacity for office. In this respect he was mainly right; but there was the lesser reason for fearing their power when held in proper check, and for endeavouring further to weaken it by measures which will not stand the test of justice. Such, for instance, was the cutting off the suburbs from the electoral Districts of Quebec and Montreal. His alleged reason was to give a commercial representation to these two towns; his real reason, well known to his Council, was to secure the exclusion of the French from the representation and the acquisition of four supporters to his Government. The first point he gained, but not the latter, as out of the four Members, three opposed him. Another measure open to the same objection, was the choice of the chefs-lieux for the District Courts. These he selected in the French Counties without any regard to the wants and conveniences of the French population, but rather in opposition to them. In one case he chose a small decayed village, in a most inaccessible part of the Country, but in the neighbourhood of a population of 2,000 English, instead of the former chief Town, five or six times the size of the other, in the most convenient position, and in the centre of a population of 20,000 French Canadians. Can it be wondered then that this party, opposed the Union, and all Lord Sydenham's measures with their utmost force—that they rejected his overtures—and endeavoured to overthrow his Government?

The mode in which several of the Elections were carried in both Provinces, but especially in Lower Canada, weakened his position with the honest and uncompromising Reformers of the Upper Province, and gave even Sir Allan McNab a pretext for annoying and opposing him.

With regard to the position of the Government during the past Session nothing could be more precarious or difficult. It was only by dint of the greatest energy, and I must add the unscrupulous personal interference of Lord Sydenham, combined with practices that I would not use, and Your Lordship would not recommend, in addition to the promise of the Loan and the bribe of the Public Works, that Lord Sydenham managed to get through the Session.

Afterwards came the day of reckoning. The means and appliances being exhausted, the power that wielded them being broken (alas! how rudely!) up sprung a crowd of malcontents. Those who were before opposed to the Government took courage; those who were overawed by Lord Sydenham's boldness or firmness shook off their unwilling fealty; all who had or fancied they had, to complain of disappointed hopes or broken pledges, joined in the defection. Of this I had some experience and warning during the early part of the year, but I had no idea of its extent until the approach of the Session and the arrival of the Members at Kingston. In this Country, where none of the Members reside at or frequent the seat of Government, except during the sitting of Parliament, and whose residencies are so far apart, and their community of interests so slight, there is very little opportunity of ascertaining their sentiments except when they are collected for the Session. I must acknowledge too that I doubt whether there existed during the last Session that sentiment of fellowship with the Members of the Government which would lead them to correspond with the latter during the vacation; or indeed whether the latter had much sense of the necessity for taking steps to unite and consolidate their party. Lord Sydenham was in fact the sole Government—he decided every thing, and did it himself—sometimes consulting his Council, but generally following his own opinion, and seldom bringing them together or consulting them collectively. To effect this required all the energy, activity and habits of business which he individually possessed, together with his extraordinary boldness and unscrupulosity in dealing with individuals. The result was that he barely succeeded in getting through the Session, and if he had not been prematurely cut off, his health would scarcely have carried him back to England. Although it was pretty generally known that he was omnipotent in his Council, still much of the blame attributed to his measures, was thrown upon his Executive, and all who wished to attack the latter found instruments in measures for which they were really little responsible.

When the Session closed the Executive Council were conscious that they could not again face the House, without an accession of strength. They accordingly, on my arrival advised that the French Canadians should be admitted.

* * * * * *

No resource remained but that pointed out by my Council, namely, to negotiate with the French unless the announcements in my Speech should succeed in turning the Tide—an almost hopeless chance—Accordingly I introduced into it as

much as I could to make it popular; the Loan Guarantee Act was passed; the public knew that I had advertised for Bills and was about to draw for money on the Treasury. I used the strongest language of hope—perhaps unjustifiably strong—with regard to an arrangement respecting the Duties on American and Canadian produce—a subject of great interest here—I announced intended improvements in two of the most important but very imperfect Acts of last Session—and in a less formal manner I allowed my intentions with regard to other measures to become known. All however was in vain—My Speech delivered on the 8th Instant was received favourably enough; it did not offer much handle for comment. The Address in reply was, at my personal request, to be moved by a new Member, who has since, I understand shewn a disposition to retreat to the (now tory) opposition Camp, and seconded by a Member already allied to the Conservatives. That party might have been propitiated by such a demonstration of friendship, if they had, under Sir Allan McNab's tutelage, been bent on overturning my Council. This I was determined to prevent; I therefore adopted the only remaining resource and sent for Mr. Lafontaine on the 10th. I told him that it was my wish to unite the body of the French Canadians in the support of my Government, and enquired upon what terms he and his party would join it, bringing with them the consent and coöoperation of the population. He was taken by surprise, and could give no definite answer, merely stating that they could not come in without Mr. Baldwin, or his assent. I did not hesitate to express my objections to Mr. Baldwin; but without insisting upon them, I referred him to his friends for consultation with them. The next day he returned demanding four places in the Council, with the admission of Mr. Baldwin into it. This I confess staggered me. The course which that gentleman had adopted under Lord Sydenham's Government and his supposed extreme views and alleged want of administrative powers, however gifted in debate, and however great his conscientiousness which is generally acknowledged even by his opponents, made me, as your Lordship knows, most unwilling to receive him into my Council. I found however that I had no hope whatever of gaining the French party and people, who now seemed at my feet, unless I admitted him. I therefore consented to receive him upon the express understanding that he was to consider himself as brought in by the French Canadian party, admitted at their request, and for the sole purpose of enabling them to redeem their debt of gratitude to him. I declined to see him, or to have any communication with him, throughout the negotiation; he was of their nomination, and had no share in the construction of my Council, except so far as he might influence Mr. Lafontaine's opinion, of which I could be supposed to know nothing. By these means, if I succeeded, I should dethrone Mr. Baldwin from his post of leader of the French party, and make him in my Council, and in the eyes of the public, but a subordinate member of the arrangement. To these terms Mr. Lafontaine was willing to accede, as far as he was concerned, but as I had only two vacancies to offer in my Council, and was only disposed to admit a third Member of the party—unless pressed beyond resistance—he required the opportunity of further consultation with his friends. Thus I had succeeded in avoiding to treat or appearing to treat, with Mr. Baldwin and his British friends, and in confining my negociation exclusively to the French party. With this of course Mr. Baldwin was not well pleased; and I was given to understand that he insisted upon the four seats and upon the notion and term of "reconstruction" of the Council being applied to the new arrangement. Upon this ground I was prepared to take a decided stand. I was willing to make any reasonable sacrifice to gain the French Canadians, but none to propitiate Mr. Baldwin, still less to throw away the key stone of my policy, which was to admit the French as a part of, or an addition to my old Council, and not to reconstruct my Council with Mr. Baldwin and the French as the steeple of it.

Meanwhile the debate on the Address was adjourned from day to day—The House became very impatient—It was known that I was negociating with Mr. Lafontaine—The Conservatives prepared to enter into alliance with the French in opposition, banded together, and shewed every disposition to increase my difficulties, collecting as many of the doubtful members as would join them. Time pressed—On the Tuesday Sept. 13th the discussion was to commence; Mr. Baldwin had prepared a very violent amendment containing an express want of confidence, which in the then existing feeling of the House would almost certainly have been carried. In addition to the natural weakness of the Govern-

ment two of its members and two or three of its supporters were absent. On the preceding Evening my Council brought me a memorandum of terms, which they recommended me definitely to offer in writing . . . with a formal intimation that if I declined to act upon it they must resign. I accordingly determined to anticipate any further demands, which the improved strength of the party might have encouraged them to make, and wrote the letter . . . in which having refused to make any reference to Mr. Baldwin as a negotiator in the matter I made the several offers suggested. The justification of these several offers and of the appointments since made under them, I transmit in a separate Appendix to this letter. This letter I placed in Mr. Lafontaine's hands on the Tuesday, and was not a little surprised when he told me that he could not accept it; as it contained a pledge to secure pensions to the Officers displaced, which Mr. Baldwin could not on principle promise to support, and which they could not undertake to carry through the House, with which the power of granting such pensions would in the first instance rest. He expressed his gratitude, almost with tears in his eyes, for the generosity of my offer but declined it—taking however my letter away with him. Previous to his visit and while anticipating a successful issue to my offer to him, Sir Allan McNab came to me in the name of the Conservative party to offer me the support of 16 votes on condition of dismissing Mr. Hincks and my two Provincial Secretaries. To this proposition, if their alliance would have availed me anything, I should have demurred; but I have already shown that it would have damaged instead of improving my position. At 3 o'clock the debate began —Finding there was reason to apprehend that my offer was not generally known to the French Canadian Party in the House, and that a knowledge of it would bring such a pressure upon Mr. Lafontaine as would either compel him to withdraw his refusal, or bring about the repudiation of his course by the majority of his friends, and thus place him in a situation almost fatal to his future power, by causing a most important division in the party, I empowered one of my Council to read my letter, which under the impression that some such course would become necessary, had not been made confidential. The effect was almost electrical. It did not stop the debate; but on the contrary Mr. Baldwin acquired additional force, and made a very vigorous and effective speech against the Government, and especially against his former friend and ally Mr. Hincks—a reply ensued—and the discussion threatened to become very personal and acrimonious. Sir Allan McNab was exceedingly bitter and violent. If a division had taken place that night a large majority would have voted against the Government; an adjournment however having been moved, an opportunity was left for the interference of the French Canadians which ended in Mr. Lafontaine's withdrawing his refusal, and my agreeing to the terms proposed in the correspondence . . . upon which the arrangement was concluded. Mr. Baldwin's amendment was withdrawn—a third address slightly altered from the first,was passed, almost without a dissentient voice, and the next night the Address of thanks already alluded to was passed by 55 to 5, the minority consisting of Sir Allan McNab; Mr. Cartwright, a member of the family compact; Mr. Moffatt, the sole representative of the old British party at Montreal; Mr. Neilson, who approves of the measure, but professes to doubt its success, being opposed to the Union, and holding his position by resisting it,—with Mr. Johnstone, a man of no opinions, who always votes against the Government, because they refused him an appointment.

Thus I have triumphantly succeeded. The House is now prepared to pass any measure or adopt any course I may suggest. All minor questions of contention are for the present thrown over the Civil List will escape attack, perhaps notice. Supplies for a year and a quarter will be voted tomorrow in one sum a few of the most essential measures will be passed, and in accordance with the desire which has been generally expressed to me by members of the House, I shall at an early period prorogue the Legislature until February.

Your Lordship's letter of the 1st Instant, and its important enclosure have led me to expect, if I had not before anticipated it, that this change of policy will be both startling and distasteful to the Government and perhaps to public opinion in England. I regret it, and most exceedingly do I regret the necessity which has compelled me to adopt it—but I cannot but hope that the position of affairs which is explained in this and my public despatch, and the knowledge that I had unfortunately not received instructions from your Lordship when the crisis suddenly arrived, will justify me in the eyes of the Government, and

I am quite prepared to leave my justification in those of the public, to the accounts of the success of my measure, which will accompany its first announcement, and will follow it in quick succession.

I have united in my favour the mass of opinion—British as well as French—both in the House of Assembly and in the Country. I have formed a strong, consistent, and united Government, founded mainly upon the principles which guided my old Government—for let me assure your Lordship, and it is an important element for the consideration of H.M. Government, that the struggles in this Country—*the main questions being now decided and settled*—it is not so much for principle as for a share of power and place. Men and not measures are for the most part the object of contest, of detraction or of admiration—And I feel little apprehensive but that with the majority that I retain of my old Council, I can prevent any extravagant attempts of my new Councillors, if such were to be made, while I have every reason to believe that they and the French Canadian party are determined to show that they may safely be admitted to a share of power, by offering every just facility, and refraining from any vexatious impediments to the march of Government. This disposition publicly avowed by many of their leaders, is a new and favourable sign. Should however a contrary course be adopted either in the Council or the House of Assembly, your Lordship and H.M. Government must always bear in mind that the British party outnumber them in both, and would oppose an effectual resistance to them. I have admitted the French Canadians not to the control of the Govt. nor to a preponderance in it, but only to a moderate share in the public administration of affairs. On the other hand any excess on the part of the Reformers, if such is to be apprehended, but which I have not observed and do not anticipate, will be the more easily repressed by the power of the French under the direction of the Government, united to the independent Conservative interest, which, under the new arrangement, will occupy the advantageous and powerful position formerly occupied by the French, of the balancing party.

I have thus my Lord, at a length which I fear will be wearisome, but which was necessary to put H.M.'s Government in possession of my position, explained the necessity and mode of my change of policy. There was but one way to avoid it—by appointing a new Executive Council prepared to act without the sympathy and against an overwhelming majority of the House of Assembly: by denying in toto the principle of Responsible Government, and refusing to act upon it, at a crisis which would immediately have brought the question to an issue unfavorable to the Government. But having before me the Act of Union, Lord John Russell's despatch of the 14th October 1839,[1] Lord Sydenham's avowed policy, the Resolutions of the House of Assembly last Session,[2] and the present feeling and temper of its members, I was not prepared, to adopt such a policy. The consequences would have been most disastrous. The Assembly would have stopped the supplies about to be voted—the questions which led to the former troubles of Canada would have been revived—all attempts to resist the power of the Assembly and the tide of public opinion would have failed, and Canada would have again become the Theatre of a wide spread rebellion, and perhaps the ungrateful separatist or the rejected outcast from British Dominion.

If I should have succeeded in convincing H.M. Government of the necessity and propriety of my policy, I would beg to urge upon them the vital importance of their marking in the strongest manner their adoption of it. This may be done by shewing that they are fully prepared to carry out the spirit of that policy, and of the Union Act, which cast a veil of oblivion over past disaffection, and to remove the brand of rebels from those to whom that Act has given all the powers of a representative Government by testifying that they consider the settlement of our recently disturbed relations with the United States to have removed one of the main grounds of apprehension and suspicion with regard to Canada, and that Her Majesty's Government is prepared to repose confidence in the firm loyalty of the mass of the Canadian People. An Act of Amnesty with the limitations suggested in my despatch No. 195 of the present date, would effectually mark Her Majesty's adoption of my policy, and this I would most strongly recommend as a wise, and now a safe measure; and I would even solicit it, as the most acceptable mark of Her Majesty's approval of my conduct.

I have &c

CHARLES BAGOT.

[1] See No. CXII. [2] See No. CXXVII.

## CXL

## STANLEY TO BAGOT, NOVEMBER 2, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Downing Street
2 November 1842

Sir,

Her Majesty's Government have given to your Despatch No. 192 of the 26th of September the anxious consideration which was due to the importance of the step which you have taken, and to which you ask their sanction, and to the magnitude of the interests involved in their decision.—In that Despatch you describe the state of feeling which you found to exist on your arrival in Canada,—the position of the various parties,—the degree of success which had attended Lord Sydenham's endeavour to give effect to the provisions of the Act of Union,—and the causes which, at the close of the first Session, rendered his majority narrow and precarious.—You proceed to state the course which you yourself pursued, in obedience to your Instructions up to the period of the opening of the Session,—the difficulties by which, from a combination of parties, your Executive Council, as then constituted, was surrounded and would speedily have been overwhelmed,—the Negotiations into which, by their advice, you entered,—the proceedings in the House of Assembly,—the ultimate re-construction of your Government,—and the effect which you conceive that re-construction to have had upon the public mind in Canada, and upon the proceedings of the Session which you have just closed by Prorogation.

I proceed to convey to you the view which, on full reflection, Her Majesty's Government are prepared to take of these transactions.—But before I do so it may be convenient that I should place upon record my Instructions of the 8th of October 1841, under which you proceeded to assume the Government of Canada. In these Instructions I find the following passage:—

"I need not point out to you that in assuming the Government of Canada you are placed in circumstances very different from any of your Predecessors—you are about to administer the affairs of a Province legislatively united after a separation of fifty Years, during which it was impossible but that separate interests, arising out of local situation, different origin, and other causes to which I will not advert, must necessarily have sprung up, and engendered rivalries and jealousies which have been most unhappily aggravated by the events of late years, and which it will be your first and chief duty by every means in your power to allay and to extinguish."

"You cannot too early and too distinctly give it to be understood that you enter the Province with the determination to know no distinctions of natural origin, or religious Creed,—to consult in your legislative capacity the happiness and (so far as may be consistent with your duty to your Sovereign and your responsibility to Her Constitutional Advisers) the wishes of the mass of the Community,—and in your Executive Capacity to administer the Laws firmly, moderately and impartially—You will invite to aid you in your labours for the welfare of the Province all Classes of the Inhabitants:—you will consider it your bounden duty to be accessible to the Representatives, and prepared to listen to their complaints, or the statements of the views of all:—and the only passports to your favour will be Loyalty to the Queen, Attachment to British Connexion and an efficient and faithful discharge of public duty."

"In civil matters it must be your policy to seek to withdraw the Legislature and the Population generally from the discussion of abstract and theoretical questions, by which the Government of Canada in former times has been too often and too seriously embarrassed, to the calm and dispassionate consideration of practical measures for the improvement and advancement of the internal prosperity of the Province.—In maturing measures of this description you will endeavour to avail yourself of the advice and service of the ablest men, without reference to distinctions of local party, which, upon every occasion, you will do your utmost to discourage; and in forming them for the Consideration of the Provincial Legislature you will endeavour to present them in the form in which they are most likely to be favorably received by the House of Assembly."

"I do not of course intend to institute a precise analogy between the functions

of that House, and those of the House of Commons, but I should strongly impress upon you my opinion, that in matters purely domestic, or when you are not bound either by absolute instructions, or by a sense of the paramount duty which you owe to Imperial interests, it would be matter of great regret that measures should be repeatedly, and deliberately affirmed by large majorities of the Assembly, and subsequently rejected by the Legislative Council. Your efforts will on all occasions be directed to promoting and maintaining harmonious action between the two Branches of the Legislature. Questions may undoubtedly arise, on which you may feel it absolutely inconsistent with your duty to sanction measures approved by one, or even both Houses, but I would hope that they may be of very rare occurrence; and that when they arise, you may be enabled temperately and firmly to reconcile the performance of your duty, upon your responsibility to the Crown, with that respect which I am sure you will be on all occasions desirous of showing to the expressed wishes of the Representatives of the People."

I have extracted thus largely from these instructions, because they explain fully the principle upon which it was intended that your Government should be conducted, and because upon a careful review of them I see nothing which, on the part of Her Majesty's Government, I desire to retract or qualify. The mode of giving effect to this policy was left to your judgment, and to your future experience of the state of affairs in the Colony, which could be but imperfectly known to the Government, in comparison with the amount of information which personal observation would supply.

I think you acted wisely in making no immediate or extensive change in the composition of your Council, as you found it constituted by your Predecessor; in taking such opportunities as presented themselves of making known the general principles on which your Government was to be conducted, and in filling up such vacancies as occurred with men of varying shades of politics, but of no extreme opinions, who might be willing to adopt and to support your avowed policy. I had hoped, I own, that, considering the multitude of parties, or sections, into which the Legislature was divided, you might have been enabled to rally round the Government a sufficient support to enable you, not indeed without difficulty, in the first instance, but with gradually increasing majorities, to carry on the business of the Country, notwithstanding any opposition which could be offered by parties who could have few, if any, bonds of union on the score of political principles. I had entertained the hope that, acting on this principle, you might have attached to you the French Canadians as a race, rather than as a party, and by the admission of a fair proportion of that people, have been enabled to evince the sincerity of your determination "to know no distinction of origin or of creed," at the same time that you afforded no ground for objection on the part of those whose loyalty and attachment to British connexion had remained unshaken, and indeed had been signally manifested, in the late unhappy disturbances.

But it appeared, as the Session of the Legislature approached, that these hopes could not be realized, that the admission of individual French Canadians had not the effect of gaining more than individual support to the Government; that persons so admitted lost their personal influence with their Countrymen, and added nothing to the strength of the Executive; that the French Canadians, if admitted at all, must be admitted as a party; that as a party, uniting, as they would have done, with others of entirely opposite principles, in opposition to your Government, they would have been able to command a majority against you; and that your Council, as then constituted, would be placed in a minority upon a Vote of want of confidence.

I am not insensible to the inconvenience which would have been the result of such an opening of your first Session, or of the angry expressions of exaggerated opinions which the continuance of a debate on such a subject might have produced; yet I confess that I am inclined to think it would have been better that such an inconvenience should have been risked, and the necessity for a reconstruction of your Council made apparent by the result of a division in the Assembly.

Your Council, however, themselves appear to have entertained an opposite opinion; and the Members who were present, tendered to you, as I believe unanimously, their advice to open a communication with M. Lafontaine, as the avowed head of the French party; and further, if I rightly understand you,

advised the nature of the communication to be made, with an intimation, that, if you declined to make it, their resignation was the necessary consequence.

I give entire credit to your Council for the disinterestedness of the motives by which they were actuated. I am aware that Mr. Draper especially, through whom I understand the public communication was subsequently made to the Assembly, well knew that in giving that advice, he was rendering impossible his own continuance in Office; yet I cannot withhold the expression of my opinion that the advice itself was injudicious, and that in giving it, the Council went beyond the proper limits of their functions. It was competent to them, as a body, to tender their resignation, and to leave in your hands the formation of a new Administration, the necessity for which their retirement would have made apparent, and of which, as reconstructed, certain Members of their body might honestly have formed a part. But I conceive that it is neither consistent with English analogy, nor with constitutional principle, for an Administration collectively at once to tender their resignation, and at the same time their advice as to the Successors to be called in, and the condition to be imposed as part of the arrangement. Your Executive Council however, did in fact confess their own inability to go on, and advised a reference to M. Lafontaine.

I consider that, in so doing, they took upon themselves a heavy responsibility. I am most unwilling to enter upon any topic of personal disqualification. I do not omit from my consideration that Lord Sydenham, on a former occasion, opened, though unsuccessfully, a negotiation with M. Lafontaine, as the organ of the French party, but, when I look back to the position in which M. Lafontaine was lately placed, I cannot but feel that his admission to Office, unless you were clearly satisfied that the charges against him were wholly groundless, should have been the evident necessary result of adherence to a constitutional principle, overbearing any motives of personal reluctance. Therefore I think that, in tendering you that advice, your Council incurred a heavy responsibility.

But farther, the nature of the communication made and the subsequent publicity given to the negotiations, seem to Her Majesty's Government to be open to grave objection. If the resignation of your Executive Council, and the reluctance of the French party generally to accept Office, without their leaders, imposed upon you the constitutional necessity of having recourse to the advice of M. Lafontaine, I cannot but regret the publication of a correspondence involving the offer of terms, in the first instance rejected, and afterwards accepted, subject to important modifications, upon the understood expression of opinion of the House of Assembly.

I have felt it my duty to express to you, on the part of Her Majesty's Government, the objections which we feel to the mode in which you were advised by your Executive Council to carry into effect the measures which the course of events had pointed out as politically necessary, because that mode appears to Us, in a constitutional point of view, not unimportant, and because it was certainly at variance with any analogy which could be drawn from the practice of the Mother Country; but while I point out these objections, I freely and readily admit the difficulties of the position in which you were placed.

You were instructed to carry on your Government, as far as possible, in accordance with the wishes of the mass of the population; and your Executive Council tendered you their resignation, on the ground that as then composed, they did not possess the confidence of the people. You were instructed to make no distinction of race, and justice and policy equally required that the French Canadians should be admitted to a participation in the Administration of affairs—and you found that the attempt to obtain their co-operation without that of their leaders was impracticable. Thus circumstanced, and your Government by their own act virtually dissolved, you acted on their advice as to the selection of their Successors; and the result has been the formation of an Executive Council, the composition of which, including a fair proportion of men of both British and French descent, appears to have commanded the approbation of a very large proportion of the House of Assembly, and has succeeded in passing harmoniously with the Legislative Council, many important measures.

Adverting to all these facts, and upon a full consideration of the Case in all its bearings, and of the consequences of a decision taken here adverse to that which you felt it to be your duty to adopt,—seeing that the Administration which you have formed will have been acting, when this Despatch shall reach you, for no inconsiderable period, in harmony with yourself as Governor, and with

the House of Assembly, and that it must be presumed from the Votes and proceedings of that House, to possess the general confidence of the People of Canada, —Her Majesty's Government are prepared to acquiesce in the Line of Policy which you have taken, and to advise The Queen to sanction and confirm it.

It will be my duty, acting on Her Majesty's behalf, to give to your Administration a cordial support, and to the measures it may bring forward the most favorable consideration. On the part of Her Majesty's Government, I have to express their earnest hope that its formation may have the effect of extinguishing party and national animosities, and of directing the minds of all men in Canada, of whatever origin, to the advancement of the prosperity of their native or adopted Country. I cannot but entertain the sanguine hope and belief, that as Her Majesty cheerfully assents in the composition of your Executive Council, to that which appears to be the general wish of the Colony, in compliance with those Constitutional principles on which the Act of Union was framed, Her Subjects of all denominations will look upon that Act, as at once the protection, and the limit, of their rights; and recognize in a strict adherence to its conditions, the best security for a due adjustment of the Prerogative of The Sovereign and the liberties of the People.

Her Majesty can receive no higher gratification than that of learning that, under its operation, peace and tranquillity are restored to the magnificent Provinces which are entrusted to your care, and that under the protection of equal laws, impartial justice, and a free Constitution fairly and honestly administered Her Canadian Subjects are daily increasing in prosperity and domestic comfort, and daily becoming more sensible of the blessings which they enjoy as a loyal and contented portion of the British Empire.

I have the honour to be
Sir
Your most obedient
humble Servant
STANLEY.

## CXLI

## STANLEY TO BAGOT, NOVEMBER 3, 1842

[Trans.: *Bagot Papers* (Canadian Archives).]

Private

Downing Street
Nov. 3 1842.

My dear Sir Charles

You stated yourself to be well aware that the line which you had felt yourself compelled to take in reference to the Construction of your Executive Council would be both "startling and distasteful" to us in England; and I need not conceal from you the fact that we received with regret the intimation of the course which had been forced upon you. By the last Mail I was unable to do more than write you a few lines of acknowledgement; but the subject was deemed so important that a determination was come to to summon the Cabinet for the 1st of this month, on which day it was held and my Public Despatch in answer to your No. 192 is the result of our deliberations. I am afraid that you will not consider the sanction conveyed in that Despatch as cordial as you could have desired; and I wish that I could have used language which would have implied a more entire approbation of your measure than it was in my power to employ consistently with the true expression of the feelings of the Cabinet. You will understand that I do not mean to blame you for the step which you have taken; on the contrary, I believe it to have been inevitable and that sooner or later it would have been found necessary to admit the leaders of the French party to a share in the Government. But I own that I should have preferred that that necessity should have been *demonstrated*. To us, who know the dessous des cartes the necessity is manifest enough; but to the public eye, you appear as Governor General, *inviting* the co-operation of men tainted with violent suspicion of treasonable practises. M. Lafontaine may have been perfectly innocent; but before the world he is a man against whom a warrant was out for High Treason,

who came to England to avoid the execution of the warrant, and to whom, on his arrival in London, a private hint was conveyed, and taken by him, that he had better not await the arrival of further intelligence from Canada. I am aware that Ld. Sydenham entered into negotiations with M. Lafontaine which were broken off; and of this fact, as well as of the details of the transaction, I shall be obliged to you to furnish me with such documentary evidence as you may be able to obtain, at your earliest convenience. M. Girouard's case is still stronger. You will see from a private Despatch of Lord Gosford's (printed for the use of the House of Commons) that M. Girouard, in the first revolt, is supposed to have been actually in arms—that a reward of £500 was offered, and paid, for his apprehension, and that although as stated by your Council he surrendered himself, he did not do so till after enduring great hardships and privations. You will see also that he was again arrested in the 2nd outbreak. I cannot but think it unfortunate that you should, if you were reduced to the necessity of negotiating with M. Lafontaine, have made him the specific offer of a seat for M. Girouard; the more especially as it since turns out that M. Girouard declines accepting it. That he has done so, is a source of great satisfaction to me; for I confess I hardly know how I could have asked the Queen to set her name to an instrument declaring her especial confidence in the "loyalty" of that gentleman. But it would have been much better, if you found yourself compelled to have recourse to M. Lafontaine that you should have had his demands in writing, rather than have committed yourself by a proposition of terms to him, when nothing that had transpired rendered evident the necessity of calling upon him at all. The distinction is a very wide one between accepting conditions offered by him as the price of his support, inconvenient and objectionable as they might be, and making to him the offer of the same conditions, as the result of previous personal intercourse. This farther inconvenience has also resulted, that it is publicly known that your terms have been refused; and that you have been obliged to recede from conditions which in the first instance you considered important. I mean the retiring Pensions for Mr. Ogden and Mr. Davidson. I think this a serious dilemma. If these Gentlemen were not fairly entitled to a retiring Pension, it was hardly fair to make it a condition of the admission of their opponents; if they were so entitled, it seems very difficult to justify the abandonment of the claim which had been made in their behalf. I hesitate, at this distance, to pronounce a positive opinion but I think it would have been better, at all events it would have been more consistent with British practice, if there is to be any analogy between the Executive Council and the Cabinet, that the whole of them should have tendered their resignations, and avowed themselves unable to go on, than that they should have come to resolutions excluding some of their own body (one at least in his absence) and advising you as to the Individuals to be taken in to fill their places. From subsequent events, M. Lafontaine appears to be a weak, timid man, who did not venture upon accepting office, until he was assured that his doing so would be sanctioned by the general view of his countrymen. That he should have privately informed himself of this fact was right & natural enough; but the way in which it was done in the face, and almost at the bidding, of the Assembly seems to me to invest that body with a dangerous power of controlling the choice of the Crown in reference to Individuals. While I state to you thus frankly the objections which I feel to the details of the course which you have taken, and when I add, as I must do, that I deeply regret the necessity which impelled you to do it, I freely admit to you that I think the necessity existed. Sooner or later, these men, or some of them, must have been admitted; but I wish that longer time had been taken, and the impossibility proved of dispensing with their admission. You will say, that in such circumstances their admission would have been a triumph. It is so under any circumstances. No Governor General except on compulsion, would have *selected*—and no British Minister would have sanctioned the *selection* of Messrs. Lafontaine & Girouard to administer, or aid in administering the affairs of the Province; and it is on the necessity of the case that I must defend, and am prepared to defend, your course of action. And do not be afraid but that, being determined in defending it, we will do so cordially, and in earnest. It is my duty to tell you in confidence the objections which I see, and the repugnance which I feel; but I know how much your power depends upon the character of the support which you receive here, and you shall not be abandoned. I can readily conceive that for the immediate purposes of Canadian administration it would have been more

convenient if I could in my public Despatch have adopted a tone of more entire approbation, and having expressed myself not merely as acquiescing in, but as thoroughly satisfied with the course which Canadian events have taken. But in the first place I could not have done so with truth—nor could I have done so without running counter to public feeling in England. I have to look, not only to impressions in Canada, but to impressions at home also; not only to the effect on your Government there, but to the possible effect on other Colonies, in the example set of the promotion of men who have taken a conspicuous part in measures which led to revolt, and who are not free from the suspicion of having participated in revolt themselves. In adopting therefore your line of policy, I neither can, nor ought I to conceal my regret that you have been compelled to take it. You ask me, if we disapprove your policy, at once to recall you. Even if we entirely disapproved it, that course would be impossible. Your Successor would be placed in a position in which he could not take a move without the certainty of check-mate; and he would have in the end to fall back upon your steps, with all the obloquy to himself and the Government, of having sought to retrace them. But I beg of you to understand fully, *that we do not disapprove* your policy; and that we are prepared to support it, and defend you for having pursued it. Only we must rest your defence on the impossibility of your carrying on the Government without having recourse to the men whom you have called to your Council.

Again, as to the amnesty, I do not doubt that at this moment, a general, and almost universal extension of amnesty would be both safe, and popular, in Canada; and with your Executive as now composed, it might be the means of avoiding some unpleasant observations; but I must look to the example held out to other Colonies, and to the effects produced here at home. I cannot forget that at this moment a Vessel is on the point of sailing for Van Diemen's Land, with 90 Convicts, transported for offences in the late disturbances here, analagous in character though generally far less serious in degree, than those for which the Canadian Convicts are suffering—and what would be the effect, if the same ship which took out the English Rioters, brought back to Canada in triumph the whole mass of convicted Traitors? I have written you a Public Despatch on the subject of this proposed amnesty, to which I have little to add privately. As soon as you furnish me with the information required, I will see how far I can safely go to meet the wishes expressed by yourself and by the House of Assembly; and I beg of you carefully to consider the effect of any specific recommendations you may make, and especially to examine who, and what, are the persons whom you would include in a general amnesty or in respect of whom you would ask for a discretionary power. And with regard to the latter, I would have you well consider, in asking for the power of drawing distinctions, whether you would be able in all cases to enforce your distinction in cases of unfavourable decisions. I can imagine a case in which application might be made to you, and refused; and in which the party so refused should bid defiance to you, enter the province in spite of you, and successfully dare you to molest him. In such a case it would have been infinitely better that you should have had no discretionary power at all.

I hope you will observe the last Paragraph of my public Despatch, as to the adherence to the provisions of the Act of Union. The present seems to me a favourable time for impressing on your Government, as a body, the propriety and the necessity of adopting that Act as a whole; and of declaring their intention to stand by its provisions, including Civil List, and every other debatable question; to take it in short as a fait accompli, which in the main has secured to them good Government, and the power of self-government, and to which therefore interest and policy alike call on them to adhere. They are strong enough to take this course, and their taking it would, I own, go a long way to reconcile me to the course which has been pursued. I regret to see that you have only got your supplies in the form of a vote of credit till March next. You had led me to expect the passing of the Estimate for a year & a quarter. The general course leaves every debatable point still open.

There are several other topics on which I should have wished to have written to you by this Mail, but times passes so that I find it impossible to do so. You shall have the instruments sent out for Draper, Lafontaine, & others which may be necessary, by the Mail of the middle of December. I wish I could have sent them sooner, but the Queen is going to Brighton, and there will be no Council

till that month. They will however, be in time, as your Session does not recommence till February. Goulburn is satisfied with the result of the money-matters and we shall be able to arrange everything for you.

Believe me, my dear Sir Charles,
very sincerely yours
STANLEY.

## CXLII

## METCALFE TO STANLEY [1]

[Trans.: J. W. Kaye, *Selections from the Papers of Lord Metcalfe*, pp. 411 ff., London, 1855.]

August 5, 1843.

*My Lord*,—Regarding Lord Sydenham as the fabricator of the frame of government now existing in this province, I have read his despatches to her Majesty's Secretary of State with attention, in search of some explanation of the precise view with which he gave to the local executive administration its present form; or of any clear understanding which he authorized the colony to entertain on the mooted question of Responsible Government.

I find that in the early portion of his despatches, whenever the notion of Responsible Government is alluded to, in the sense in which it is here understood, he scouts it. There are some remarkable passages in his letters from Halifax, or about the time of his mission to Nova Scotia, which indicate decisively his view of that question. In speaking of a vote of want of confidence passed in the Legislative Assembly of that province, with regard to a member or members of the Executive Council, he reprobates such a vote as unconstitutional. He does not entertain the same opinion of a petition from the House to her Majesty for the removal of the Governor. This proceeding he regards as the constitutional mode by which a colony may express its disapprobation of the administration of the government, and seek redress against the measures of the Governor. Nothing could more clearly define his view of the responsibility of a colonial Government, which evidently was, that the Governor is the responsible Government; that his subordinate executive officers are responsible to him, not to the Legislative Assembly; and that he is responsible to the Ministers of the Crown, and liable to appeals from the colony against his proceedings; it being, at the same time, incumbent on him to consult local feelings, and not to persist in employing individuals justly obnoxious to the community.

Regarding this as the view taken of the question by Lord Sydenham, it is beyond measure surprising that he adopted the very form of administration that was most assuredly calculated to defeat that purpose, and to produce or confirm the notion of Responsible Government which he had before reprobated; that is, the responsibility of the executive officers of the Government to the popular Legislative Assembly. In composing his Council of the principal executive officers under his authority, in requiring that they should all be members of the Legislature, and chiefly of the popular branch, and in making their tenure of office dependent on their commanding a majority in the body representing the people, he seems to me to have ensured, with the certainty of cause and effect, that the Council of the Governor should regard themselves as responsible, not so much to the Governor as to the House of Assembly. In adopting the very form and practice of the Home Government, by which the principal Ministers of the Crown form a Cabinet, acknowledged by the nation as the executive administration, and themselves acknowledging responsibility to Parliament, he rendered it inevitable that the Council here should obtain and ascribe to themselves, in at least some degree, the character of a Cabinet of Ministers. If Lord Sydenham did not intend this, he was more mistaken than from his known ability one would suppose to be possible; and if he did intend it, he, with his eyes open, carried into practice that very theory of Responsible Colonial Government which he had pronounced his opinion decidedly against.

I cannot presume to account for this apparent inconsistency otherwise than

[1] Metcalfe's dispatch illustrates the breaking down of Sydenham's system of 'responsible government'. Kaye's note is reprinted at the end of the dispatch. For Metcalfe's government, see Dent, J. C., *Canada Since the Union of* 1841 (Toronto, n.d.); and Wakefield, E. Gibbon, (?) *View of Sir Charles Metcalfe's Government of Canada* (1844); Morison, *British Supremacy and Canadian Self-Government* (Toronto, 1919); Martin, *Empire and Commonwealth* (Oxford, 1929); Kennedy, *The Constitution of Canada* (Oxford, 1923).

by supposing either that he had altered his opinion when he formed his Council after the union of the two provinces, or that he yielded against his own conviction to some necessity which he felt himself unable to resist. His despatches do not furnish any explanation as to which of these influences he acted under; at least, I have not discovered in his latter despatches any opinion on the subject on which he had previously declared his decision against the theory, which he practically carried into effect, by avowedly making the tenure of office dependent on the support of a majority in the popular branch of the Legislature.

It is understood that he was little accustomed to consult his Council, and that he conducted his administration according to his own judgment. His reputation for ability stands very high in this country; but it is believed that he could not have carried on his Government much longer without being forced to yield to the pressure of the Legislative Assembly on his Executive Council. Before the commencement of the first session of the Parliament of Canada, the only session of the united province that he lived, or ever intended, to go through, he was threatened with a vote of want of confidence against a part of his Council—the very vote which he had pronounced to be unconstitutional. This was averted during that session by a division in the Reform party, but the session, I am informed, was scrambled through with difficulty, the majorities reckoned on in support of the Government on some questions not exceeding one voice, and there not being in every instance even that. The first week of the session was occupied in extorting from the members of the Council an avowal of their responsibility to the majority, according to the popular construction of Responsible Government. The vote of want of confidence was averted in that session only to be brought forward in the next, when, as is known, the dread of it operated with decisive effect.

I dwell on Lord Sydenham's administration because it has had a most important influence, which is likely to be permanent, on the subsequent government of this province. He established, among the last acts of his administration, what is here called Responsible Government, and left the problem of the success of that system in Colonial Government to be solved by futurity. It may have been that to carry the measures which he had immediately at heart he could not avoid what he adopted.

The term Responsible Government, now in general use in this colony,[1] was derived, I am told, from the marginal notes of Lord Durham's report. Previously to the publication of that document, the Democratic party in Upper Canada had been struggling for a greater share than they possessed in the administration of the Government of the country; but they had no precise name for the object of their desires, and could not exactly define their views. Lord Durham's report gave them the definition, and the words Irresponsible Government, Responsibility of the Government, Responsibility of the Officers of the Government, occurring repeatedly in the marginal notes, it is said furnished the name. From that time "Responsible Government" became the war-cry of the party. Lord Sydenham, on his arrival in Upper Canada, had to encounter or submit to this demand. One of his objects was to win the Reform party, the name assumed by the party in question, and they could only be won by the belief on their part that Responsible Government was to be conceded. In fact, Lord Sydenham, whether intending it or not, did concede it practically by the arrangements which he adopted, although the full extent of the concession was not so glaringly manifested during his administration as in that of his successor.[2]

There appears to me to have been a great difference between the sort of Responsible Government intended by Lord Durham and that carried into effect by Lord Sydenham. On examining Lord Durham's report in search of what may be supposed to have been his plan, I find that he proposes that all officers of the Government except the Governor and his secretary should be responsible to the United Legislature; and that the Governor should carry on his government by heads of departments, in whom the United Legislature repose confidence. All this might be done without impairing the powers of usefulness of the Governor. If the secretary who issued the Governor's orders were not responsible to the Legislature, there would be a great difference from the present arrangement under which the provincial administration generally is carried on through secre-

[1] On May 14, 1829, however, a petition signed by over two thousand inhabitants of Upper Canada was presented to the house of commons asking for 'a local responsible ministry'.

[2] Sir Charles Bagot. (See Nos. CXXVIII–CXLI.)

taries professedly so responsible. The general responsibility of heads of departments acting under the orders of the Governor, each distinctly in his own department, might exist without the destruction of the former authority of her Majesty's Government. In this scheme there is no mention of the combination of these officers in a Council, to act bodily with the character of a Cabinet, so as manifestly to impair the powers of the responsible head of the Government. Lord Durham's general conception does not seem to have been formed into a distinct plan, and when he says that the responsibility to the Legislature of "all officers of the Government except the Governor and his secretary should be secured by every means known to the British constitution," he does not explain by what means this should be done; and it is by the means of doing it that the plan must be most materially affected.

Lord Sydenham realised the conception in the way most calculated to weaken the authority of the Governor, and render the responsibility of the officers of the Government to the popular branch of the Legislature complete, by transacting the business of the province through the provincial secretaries, and making them and all the heads of departments a Council responsible to the Legislature, and holding their seats by the voice of the majority. As far as Lord Sydenham's despatches show, this was an optional and spontaneous arrangement on his part, although clearly opposed in its natural consequences to the sentiments which he had previously expressed.

Lord Sydenham's policy in Upper Canada was to win the party calling themselves Reformers, to crush the party called the Family Compact, and to form a Council of the moderate men of the Reform and Conservative parties. In the two former of these objects he succeeded. In the latter he must be said to have failed, for, although the Council so formed struggled through one short session of the Legislature, it could not meet, or was afraid to meet, the threatened storm in the next, and was broken up, the Conservative portion retiring to make way for the French party, and what was considered the extreme Democratic, or Reform party.

Lord Sydenham's policy in Lower Canada had been to subdue the French party. In this he failed. They remained compact and exceedingly embittered against Lord Sydenham. They united themselves with the extreme Democratic party; these were strangely joined by the extreme Conservative party; and this combination overthrew Lord Sydenham's Council, which had been previously recruited by Sir Charles Bagot, with accessions from both the Conservative and the Reform parties.

By these manœuvres the French and Reform parties became united, the Conservatives were thrown into a minority, and the ultra-Conservatives, who had aided in bringing about this change, were dropped by their recent allies, in accordance with the terms of their alliance, which was only for offensive war against the Council.

The result of this struggle naturally increased the conviction that Responsible Government was effectually established. New councillors were forced on the Governor-General, to at least one of whom he had a decided antipathy. The Council was no longer selected by the Governor. It was thrust on him by the Assembly of the people. Some of the new members of the Council had entered it with extreme notions of the supremacy of the Council over the Governor—that is, of the necessity of his conforming to their advice on all matters, great or small; and the illness of Sir Charles Bagot after this change threw the current business of adminstration almost entirely into their hands, which tended to confirm these notions. Subsequent experience has, I hope, modified these impressions, and produced a more correct estimate of the relative position of the Governor and the Council; but it is obvious that the existence of a Council, in reality appointed and maintained by a majority in the popular branch of the Legislature, must tend to impair the power and influence of the Governor. Whether this, in the end, will operate advantageously for the colony and the mother country, time alone can positively show. I am disposed to think that its immediate effects are injurious, presuming, as I do, that whatever good it may seem to effect might have been produced in another way.

One evil of this kind of Responsible Government is, that it tends to produce the government of a party. The Governor may oppose himself to this, but will hardly be able to do so effectually. The Council will be apt to think more of securing their own position than of cordially co-operating in the accomplishment

of his wishes. Their recommendations in matters of patronage, which in the relations existing between them and the Governor are likely to be often attended to, even without admitting their claim to a monopoly, will be almost always in favour of partisans. Their supporters look to them for the exclusive bestowal of places of emolument, and threaten openly to withdraw their support from them if they do not favour their views. To maintain the majority by which they hold office will be with them a primary concern; such, at least, is the tendency of the circumstances of their position, without supposing the total absence of higher and better motives.

Without a Council so circumstanced, a Governor, acknowledging the propriety and necessity of conducting his government according to the interests and wishes of the people, and of conciliating and winning the Legislature—and this might have been made a rule for the guidance of Governors never to be departed from—might render his administration of the government satisfactory to all parties, and obtain an influence conducive to the preservation of affectionate relations between the mother country and the colony, and to the welfare and interests of both. Under the existing system, the Governor, it appears to me, is not likely to obtain influence. If he and his Council are cordially united, he becomes, either in reality or to appearance, a partisan, without any reason for his being so. The credit of all the good that he may do will be assumed by them, or ascribed to them, by their party. All that may be considered evil by the other party he will have the discredit of allowing. If he evinces any disposition to conciliate the other party, he becomes an object of distrust to his Council and their party. Their interests and his, and with his those of her Majesty's Government, are always distinct; for they have their interests as a party to guard, which must be distinct from those of her Majesty's Government, as well as from any which the Governor may personally feel with respect to the credit of his administration.

I will endeavour to describe my own position. I am not perfectly satisfied with my Council, chiefly because they are under the influence of party views, and would, if they could, drag me on with them in the same course. The only effectual remedy would be to dismiss them, or such of them as are most in the extreme on this point, and form another Council. But the consequence to be expected would be, that a cry would be raised accusing me of hostility to Responsible Government. The new Council would not be able to stand against a majority in the popular branch of the Legislature, and I should either be obliged to take back those whom I had dismissed, with a sort of disgrace to myself injurious to the efficiency of my government, or be in a continual warfare with a majority in the House of Assembly that would render my presence here of no benefit to her Majesty's service. Such a contest I would neither shrink from nor yield to, if it became my duty to encounter it; but it is so desirable to avoid it, that it would require strong grounds to justify its being wilfully incurred.

My objects are to govern the country for its own welfare, and to engage its attachment to the parent State. For these purposes it is my wish to conciliate all parties; and although this might be difficult, I do not perceive that it would be impracticable, if the Governor were free to act thoroughly in that spirit; but the accomplishment of that wish seems almost impossible when the Governor is trammelled with a Council deeming it necessary for their existence that their own party alone should be considered. Sooner than abandon myself as a partisan to such a course, I would dismiss the Council and take the consequences; but it is scarcely possible to avoid the influence of party spirit in an administration in which every adviser and every executive officer is guided by it; and the chief difficulty of my position, I conceive, is to act according to my own sense of what is right, and in opposition to this party spirit, without thereby breaking with the Council and the majority that at present support them. The form of administration adopted by Lord Sydenham appears to me to have put heavy shackles on any Governor who means to act with prudence, and would not recklessly incur the consequences of a rupture with the majority in the popular Assembly. The meeting of the Legislature will probably enable me to see my position more clearly. It is at present far from certain that a change of councillors would produce any beneficial alteration in respect to the difficulty noticed, for any Council appointed on the principle of Canada Responsible Government would most probably have similar party views, and the same pressure on them from their partisans.

It becomes a question whether Party Government can be avoided. The

experiment of Responsible Government in this colony hitherto would indicate that it cannot. It seems to be inevitable in free and independent States where Responsible Government exists; and the same causes are likely to produce similar effects everywhere; but there is a wide difference between an independent State and a colony. In an independent State all parties must generally desire the welfare of the State. In a colony subordinate to an Imperial Government, it may happen that the predominant party is hostile in its feelings to the mother country, or has ulterior views inconsistent with her interests. In such a case, to be obliged to co-operate with that party, and to permit party government to crush those who are best affected, would be a strange position for the mother country to be placed in, and a strange part for her to act. This ought to have been well considered before the particular system which has obtained the name of Responsible Government was established. It is now, perhaps, too late to remedy the evil. I have supposed an extreme and possible case without intending to apply the description to the state of parties in this colony. I trust that it is in a great degree inapplicable. It is nevertheless so far applicable, that the party always known as the British Party in this province is now in the minority. It will be my study to make all parties contented and happy; but that part of my task, I fear, is hopeless. It will also be my study to promote loyalty to our gracious Sovereign, and attachment to the British Empire. These feelings will be most successfully confirmed by an administration of the government satisfactory to the people, and by a conviction in their minds that their interests are promoted by British connexion. The acts of her Majesty's Government in guaranteeing the loan for public works, and in facilitating the importation of Canada wheat and flour into the United Kingdom, ought to have in this respect a very beneficial tendency, as evincing a fostering care for the colony which can hardly fail to be highly appreciated.

I have to apologise for some repetition in this despatch of sentiments nearly the same as those expressed on former occasions on which I have noticed the same subject. It is one which has unavoidably occupied much of my attention, and is brought before me continually by daily occurrences. I feel that the little power of usefulness that I might have had under different circumstances is obstructed by the plan of administration introduced into this colony; but that any attempt to remove the impediment would most probably be still more injurious. I have therefore dilated on the peculiarity of my position more frequently than may seem necessary; and I trust that I shall not again trouble your Lordship on this topic.

[The anticipations shadowed forth in the preceding despatch were soon fulfilled. Sir Charles Metcalfe said truly that "the chief difficulty of his position was to act according to his sense of what was right without breaking with his Council." In a preceding despatch he had spoken of the requirements of his Council, and the impossibility of submitting to them consistently with the duty that he owed to the Imperial Government. "I am required," he said, "to give myself up entirely to the Council; to submit absolutely to their dictation; to have no judgment of my own; to bestow the patronage of the Government exclusively on their partisans; to proscribe their opponents; and to make some public and unequivocal declaration of my adhesion to these conditions, including the complete nullification of her Majesty's Government." But he was not disposed to purchase peace on such terms as these. As the autumn advanced, the prospect of a rupture with the Executive Council seemed more and more imminent: "At the end of November the crisis came. The question which precipitated it at last was a question of patronage. Metcalfe had appointed to his personal Staff a French-Canadian officer who was distasteful to Mr. Lafontaine. The appointment was intended to conciliate the French-Canadian community, but it offended their chief. The leaders of both parties in the Council then waited on the Governor-General, intent on advancing the pretensions of the Executive. They demanded that the Governor-General should make no appointment without the sanction of his Ministers. During two long sittings, on the 24th and 25th of November, Baldwin and Lafontaine pressed their demands with energy and resolution; but Metcalfe, in his own placid way, was equally energetic and resolute. . . . On the 26th of November, all the members of the Council, with the exception of Mr. Daly, finding that they could not shake the firmness of the Governor-General, resigned their offices, and prepared to justify their conduct to Parliament and the colony at large."]

## CXLIII

## EARL GREY TO LIEUTENANT-GOVERNOR SIR JOHN HARVEY, K.C.B.[1]

[Trans.: *Imperial Blue Books relating to Canada*, 1844–8, vol. xv.]

Extracts from a Despatch from Earl Grey to Lieutenant-Governor Sir John Harvey, K.C.B., dated—

Downing Street, 3 *November*, 1846.

I have received your Despatch of the 15th September, marked "Private and Confidential," in which you communicate to me your views upon the state of affairs which you have found on arriving in Nova Scotia.

Circumstances prevented me from answering your Despatch, as you wished me to have done, by the packet which left England on the 3d instant; but the interval which has since elapsed has enabled me to devote more time to the consideration of the questions which you have brought under my notice than the brief space between the arrival and the departure of the North American packet would have allowed me to do.

I perceive, from your representation of the position of affairs in Nova Scotia, that there are questions to be determined in respect to the government of that province of no ordinary difficulty, and that it is of the utmost importance that the first measures of your administration should be preceded by the most careful deliberation. The knowledge which I possess of the local politics of Nova Scotia is at present too limited to enable me, with confidence in my own judgment, to give you any positive and detailed directions as to the course which circumstances may require you to adopt in the present conjuncture; but though it is out of my power to give you such instructions, there are certain general principles which ought, as I conceive, to govern your conduct in this and in similar cases; and which, as they admit of being stated, ought, I think, to be communicated to you for your guidance.

I shall advert first to the important topic of the composition of the Legislative Council. In making appointments to this body, it ought undoubtedly to be the object of the administrator of the Government so to compose it as to make it fairly represent the opinion of the majority of the intelligent members of the community; but supposing the selection of the present members to have been ill-advised, and that the Council in consequence is not in harmony with public opinion, the question arises, what is then the proper course to be adopted? Under such circumstances there are two considerations to which it is necessary to advert. First, that it is impossible to allow the Legislative Council to obstruct permanently the passing of measures called for by public opinion, and sent up by the popular branch of the Legislature. Secondly, that it is a serious evil to be compelled to make an addition to the members of this body for the purpose of changing the character of the majority; since each such addition creates both a precedent and a necessity for a similar and perhaps larger addition whenever a change in public feeling gives the ascendancy to a new party in the assembly. It is difficult to reconcile these almost conflicting considerations, but this, in my opinion, may be attempted with the greatest hopes of success, by adopting as a rule that an addition is not to be made to the Legislative Council with a view to changing the character of the majority, except under circumstances of clear and obvious necessity. An anticipation that public business will be impeded because there is a majority in the Legislative Council attached to the political party which has not the confidence of the colony is insufficient to justify the appointment of additional members. Practical inconvenience must have actually arisen, and to a serious extent, before resort can with propriety be had to any measure for increasing the number of the Council. If that body be found obstructing pertinaciously the progress of public business, and the passing of laws which public opinion demands, an addition to it would then be felt to be a just and necessary measure, and would not excite the same indignation, on the part even of those against whom it might be directed, as would be the case if adopted on lighter grounds; while the probability is that the members of the Legislative Council, knowing that if it should become necessary this measure must ultimately

[1] This and the dispatch which follows contain the scheme of 'full responsible government' as worked out in Nova Scotia by the lieutenant-governor, sir John Harvey, and in Canada by lord Elgin.

be resorted to, will shrink from creating the necessity by obstinately opposing themselves to the real opinion of the intelligent classes of the community.

* * * * * * *

I come now to the second question which you have submitted to me in your Despatch, namely, the propriety of dissolving the present House of Assembly.

* * * * * *

I am of opinion that under all the circumstances of the case, the best course for you to adopt is to call upon the members of your present Executive Council to propose to you the names of the gentlemen whom they would recommend to supply the vacancies, which I understand to exist, in the present Board. If they should be successful in submitting to you an arrangement to which no valid objection arises, you will of course continue to carry on the government through them, so long as it may be possible to do so satisfactorily, and as they possess the necessary support from the Legislature. Should the present Council fail in proposing to you an arrangement which it would be proper for you to accept, it would then be your natural course, in conformity with the practice in analogous cases in this country, to apply to the opposite party, and should you be able, through their assistance, to form a satisfactory Council, there will be no impropriety in dissolving the Assembly upon their advice; such a measure, under those circumstances, being the only mode of escaping from the difficulty which would otherwise exist of carrying on the government of the province upon the principles of the constitution.

The object with which I recommend to you this course, is that of making it apparent that any transfer which may take place of political power from the hands of one party in the province to those of another is the result not of an act of yours but of the wishes of the people themselves, as shown by the difficulty experienced by the retiring party in carrying on the government of the province according to the forms of the constitution. To this I attach great importance; I have therefore to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself as they have a right to expect, to carry on the government of the province satisfactorily, and command the confidence of the Legislature.

Of whatsoever party your Council may be composed, it will be your duty to act strictly upon the principle you have yourself laid down in the memorandum delivered to the gentleman with whom you have communicated, that, namely, "of not identifying yourself with any one party," but instead of this, "making yourself both a mediator and a moderator between the influential of all parties." In giving, therefore, all fair and proper support to your Council for the time being, you will carefully avoid any acts which can possibly be supposed to imply the slightest personal objection to their opponents, and also refuse to assent to any measures which may be proposed to you by your Council, which may appear to you to involve an improper exercise of the authority of the Crown for party rather than for public objects. In exercising, however, this power of refusing to sanction measures which may be submitted to you by your council, you must recollect that this power of opposing a check upon extreme measures proposed by the party for the time in the government, depends entirely for its efficacy upon its being used sparingly, and with the greatest possible discretion. A refusal to accept advice tendered to you by your council is a legitimate ground for its members to tender to you their resignation, a course they would doubtless adopt should they feel that the subject on which a difference had arisen between you and themselves was one upon which public opinion would be in their favour. Should it prove to be so, concession to their views must, sooner or later, become inevitable, since it cannot be too distinctly acknowledged that it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinion of the inhabitants.

Clearly understanding, therefore, that refusing to accede to the advice of your council for the time being upon a point on which they consider it their duty to insist, must lead to the question at issue being brought ultimately under the decision of public opinion, you will carefully avoid allowing any matter not of very grave concern, or upon which you cannot reasonably calculate upon being in the end supported by that opinion, to be made the subject of such a difference. And if, unfortunately, such a difference should arise, you will take equal care that its cause and the grounds of your own decision are made clearly to appear in written documents capable of being publicly quoted.

The adoption of this principle of action by no means involves the necessity of a blind obedience to the wishes and opinions of the members of your Council; on the contrary, I have no doubt that if they see clearly that your conduct is guided, not by personal favour to any particular men or party, but by a sincere desire to promote the public good, your objections to any measures proposed will have great weight with the Council, or should they prove unreasonable, with the Assembly, or, in last resort, with the public.

Such are the general principles upon which the constitutions granted to the North American colonies render it necessary that their government should be conducted. It is, however, I am well aware, far easier to lay down these general principles than to determine in any particular case what is that line of conduct which an adherence to them should prescribe. In this your own judgment and a careful consideration of the circumstances in which you are placed must be your guide; and I have only, in conclusion to assure you that Her Majesty will always be anxious to put the most favourable construction upon your conduct in the discharge of the arduous duties imposed upon you by the high situation you hold in Her service.

## CXLIV

## EARL GREY TO LIEUT.-GOVERNOR SIR JOHN HARVEY, K.C.B.

[Trans.: *Imperial Blue Books relating to Canada*, 1844–8, vol. xv.]

Downing Street, 31 *March*, 1847.

Sir,

I have already acknowledged the receipt of your Despatch of the 2d February, enclosing two letters to yourself from your Executive Council, and I now propose to communicate the conclusions at which I have arrived after that attentive consideration which I have felt due, as well to the intrinsic merits of the views stated by your advisers, as to the respectable source from which the statement emanates.

In doing so, it will be convenient that I should at the same time advert to the correspondence which, soon after your assumption of the government of Nova Scotia, you had with Mr. Howe and his friends.

Upon a careful comparison of these very able papers, in which the members of your Council and their political opponents have stated their respective views as to the manner in which the Executive Government of Nova Scotia ought to be conducted, I am led to the conclusion that there is not in reality so wide a difference of principle between the conflicting parties as would at first sight appear to exist, and that it may not be impossible to chalk out a system of administration to be hereafter adopted, to which, without the slightest sacrifice of consistency, both might assent.

On the one hand, I find that the members of your Council declare that they "desire in no degree to weaken the responsibility of the Provincial Government to the Legislature," and I gather from the general tenor of their papers of the 28th and 30th of January, that they are aware that, in the present state of affairs, and of public opinion in Nova Scotia, it is necessary that the Governor of the province should, in administrating its affairs, have the advice and assistance of those who can command the confidence of the Legislature, and more especially of that branch of the Legislature which directly represents the people.

On the other hand, I can hardly doubt that the gentlemen of the opposite party who have insisted so strongly upon the necessity of what is termed "responsible government," would admit the justice and importance of many of the arguments which have been used, in order to show the danger and inconvenience of making the general tenure of offices in the colonial service to depend upon the fluctuations of political contests in the Assembly. I am the more convinced that the gentlemen of the opposition will recognize the force of these arguments, because I observe in the various papers in which they have stated their views, frequent references, either direct or implied, to the practice of this country, as that which affords the best model for imitation in laying down rules as to the manner in which the government of Nova Scotia should be carried on. Now there is scarcely any part of the system of government in this country which I consider of greater value than that, which though not enforced by any written law, but deriving its authority from usage and public opinion, makes the tenure

of the great majority of officers in the public service to depend upon good behaviour. Although with the exception of those who hold the higher judicial situations, or situations in which judicial independence has been considered to be necessary, the whole body of public servants in the United Kingdom hold their offices technically during the pleasure of the Crown, in practice all but the very small proportion of offices which are distinguished as political, are held independently of party changes, nor are those who have once been appointed to them ever in point of fact removed, except in consequence of very obvious misconduct or unfitness. Thus, in fact, though the legal tenure, "during good behaviour," is rare, tenure during good behaviour, in the popular sense of the term, may be said to be the general rule of our public service.

The exception is in the case of those high public servants whom it is necessary to invest with such discretion as really to leave in their hands the whole direction of the policy of the empire in all its various departments. Such power must, with a representative government, be subject to constant control by Parliament, and is therefore administered only by such persons as from time to time enjoy the confidence of Parliament as well as of the Crown. These heads of departments, or Ministers, together with their immediate subordinates who are required to represent or support them in Parliament, are almost invariably members of one or other House, and hold their offices only as long as they enjoy the confidence of Parliament.

Though it is not without some inconveniences, I regard this system as possessing upon the whole very great advantages. We owe to it that the public servants of this country, as a body, are remarkable for their experience and knowledge of public affairs, and honourably distinguished by the zeal and integrity with which they discharge their duties, without reference to party feeling; we owe to it also, that as the transfer of power from one party in the State to another is followed by no change in the holders of any but a few of the highest offices, political animosities are not in general carried to the same height, and do not so deeply agitate the whole frame of society as in those countries in which a different practice prevails. The system with regard to the tenure of office which has been found to work so well here, seems well worthy of imitation in the British American Colonies, and the small population and limited revenue of Nova Scotia, as well as the general occupation and social state of the community, are, in my opinion, additional reasons for abstaining, so far as regards that province, from going further than can be avoided, without giving up the principle of executive responsibility, in making the tenure of offices in the public service dependent upon the result of party contests. In order to keep the Executive Government in harmony with the Legislature, it is doubtless necessary that the direction of the internal policy of the colony should be entrusted to those who enjoy the confidence of the Provincial Parliament, but it is of great moment not to carry the practice of changing public officers further than is absolutely necessary for the attainment of that end, lest the administration of public affairs should be deranged by increasing the bitterness of party spirit, and subjecting the whole machinery of Government to perpetual change and uncertainty.

In the practical application of these views, there will, I am aware, be room for considerable difference of opinion.

In this, as in all questions of classification, varying circumstances and the various views taken by different men, will give rise to discussions and occasional alterations with respect to particular offices. Your acquaintance with what has passed, and is passing in the mother country, will suggest to you instances in which the question has been raised, whether a particular office should or should not be a Parliamentary office; and some in which different offices have been deliberately removed from the one into the other class.

The question how many of the public officers in Nova Scotia ought to be regarded as political, is one to be determined on the general principles I have before laid down, and with reference to various considerations arising from the peculiar exigencies of the public service, and the finances and social state of the colony. The practical end of responsible government would be satisfied by the removability of a single public officer, provided that through him public opinion could influence the general administration of affairs. Without quite assenting to the too modest estimate which your present Council have given of the resources of the province, I admit that the smallness of the community, its want of wealth, and the comparative deficiency of a class possessing leisure and independent

incomes, preclude it from, at present, enjoying a very perfect division of public employments. Small and poor communities must be content to have their work cheaply and somewhat roughly done. Of the present members of your Council, the Attorney-General and Provincial Secretary, to whom the Solicitor-General should perhaps be added, appear to me sufficient to constitute the responsible advisers of the Governor. The holders of these offices should henceforth regard them as held on a political tenure. And, with a view to that end, the Provincial Secretary should be prepared, in the events of any change, to disconnect from his office that of the clerkship of the Council, which seems to be one that should on every account be held on a more permanent tenure.

It is possible that in the event of any change being rendered necessary by the course of events in the Provincial Parliament, the party succeeding to power might insist on increasing this number of political offices, by adding to the list of those to be so regarded. In case such a question should arise, I must leave it to your discretion, on a view of various local and temporary circumstances, which I am unable at present to appreciate, to form your own decision with respect to any such demand. I should feel no objection to somewhat increasing the number of political offices (for instance, by appointing a financial secretary and a responsible chief of the department of public lands and works), should the expense of doing so, without injustice to those now in the public service, be found to be not more than the colonial revenue would conveniently bear. But I rely on your using your influence to resist that disposition, which a party succeeding to power often exhibits, to throw open the various offices of emolument to their friends, without sufficient regard to the mischiefs thereby permanently entailed on the public service. And it is but due to what I have seen of the conduct of the principal advocates of responsible government in Nova Scotia, to express my reliance on their public spirit and sober estimate of their country's position and interests, as the most effectual safeguard against any abuse of power.

There is another safeguard which, even with the less considerate members of any party, you will, I think, find sufficient to protect the public interests against any great disposition unnecessarily to place offices hitherto held on what has practically been a tenure of good behaviour, on one of a more precarious nature. However desirous the people of Nova Scotia may be to establish the principle of responsible government, they would I feel assured, shrink from effecting any reform, however just or necessary, at the cost of injustice to individuals. Now, when individuals have engaged in the public service under a belief, sanctioned by custom, that they obtained a tenure of their offices during good behaviour, it would be most unjust to change that tenure to one of dependence on a parliamentary majority, without ensuring them a provision that would make up for the loss of official income. I think that the consideration that the grasping at any particular office would necessitate the provision of an adequate pension for its occupant, will be a salutary check on any disposition to carry party government beyond its just limits.

This condition must be applied to the removal of those public officers who now have seats in your Executive Council, unless where they have clearly accepted office on an understanding to the contrary effect. I cannot suppose that the necessity of providing the requisite pensions will be deemed by the Assembly an unreasonable accompaniment of the establishment of parliamentary government. And hereafter I think it would be proper to recognise as an invariable rule, that no person should without such provision be deprived of any office (except upon the ground of unfitness or misconduct), unless he had accepted it on the distinct understanding that it was to be held virtually, as well as nominally, during pleasure.

I entertain a strong conviction that the adoption of such a rule will be found conducive not only to the interests of the holders of offices, but also to those of the public, and to a true economy of the public money. As I have already observed, it is impossible to expect that men of superior capacity will devote themselves to the public service unless they are assured that their employment will be permanent, or are offered emoluments so large as to make up for the uncertainty of the tenure by which they are enjoyed. If the emoluments of public employment are small, and its tenure at the same time uncertain, a strong temptation is given to the holders to endeavour to make up for these disadvantages by irregular gains, and thus to give rise to practices equally injurious to the community in a pecuniary and in a moral point of view.

You will observe that, in the preceding observations, I have assumed that those only of the public servants, who are to be regarded as removable on losing the confidence of the Legislature, are to be members of the Executive Council. This I consider to follow from the principles I have laid down. Those public servants, who hold their offices permanently, must upon that very ground be regarded as subordinate, and ought not to be members of either house of the Legislature, by which they would necessarily be more or less mixed up in party struggles; and, on the other hand, those who are to have the general direction of affairs exercise that function by virtue of their responsibility to the Legislature, which implies their being removable from office, and also that they should be members either of the Assembly or of the Legislative Council. But this general direction of affairs, and the control of all subordinate officers, it is the duty of the Governor to exercise through the Executive Council; hence the seats in that Council must be considered as in the nature of political offices, and if held in connexion with other offices must give to these also a political character. This, however, leads me to observe, that if only two or three of the principal offices are to be regarded as political, it may very probably be advisable to assign salaries to two or three of the Executive Councillors as such. The Executive Council has duties of a very important character to perform; those duties, and the defects in the manner in which they had then generally been discharged I find thus described in a confidential despatch which the late Lord Sydenham, then Mr. P. Thomson, addressed to Lord J. Russell, from Halifax, in the year 1840:—

"The functions of the Executive Council, on the other hand are, it is perfectly "clear, of a totally different character. They are a body upon whom the Governor "must be able to call at any or at all times for advice; with whom he can consult "upon the measures to be submitted to the Legislature, and in whom he may "find instruments, within its walls, to introduce such amendments in the laws "as he may think necessary, or to defend his acts and his policy. It is obvious, "therefore, that those who compose this body must be persons whose constant "attendance on the Governor can be secured; principally, therefore, officers of "the Government itself; but, when it may be expedient to introduce others, "men holding seats in one or other House, taking a leading part in political life, "and above all exercising influence over the Assembly."

* * * * * *

"The last, and, in my opinion, by far the most serious defect in the Govern- "ment, is the utter absence of power in the Executive, and its total want of "energy to attempt to occupy the attention of the country upon real improve- "ments, or to lead the Legislature in the preparation and adoption of measures "for the benefit of the colony. It does not appear to have occurred to any one "that it is one of the first duties of the Government to suggest improvements "where they are wanted. That the constitution having placed the power of "legislation in the hands of an Assembly and a Council, it is only by acting "through these bodies that this duty can be performed, and that if these proper "and legitimate functions of Government are neglected, the necessary result "must be, not only that the improvements which the people have a right to "expect will be neglected, and the prosperity of the country checked, but that "the popular branch of the Legislature will misuse its power, and the popular "mind be easily led into excitement, upon mere abstract theories of government, "to which their attention is directed as the remedy for the uneasiness they feel."

In this view of the proper functions of the Executive Council I entirely concur; but I greatly doubt whether they could be adequately discharged by a Council composed of only two or three persons holding offices in the public service, and of gentlemen serving gratuitously. It is hardly possible to expect that those so serving should devote any large portion of their time to their public duties, and it therefore appears to me highly desirable that salaries should be assigned to at least one or two seats in the Executive Council.

On such terms as these, which I have thus detailed, it appears to me that the peculiar circumstances of Nova Scotia present no insuperable obstacle to the immediate adoption of that system of parliamentary government which has long prevailed in the mother country, and which seems to be a necessary part of representative institutions in a certain stage of their progress.

I have thought it due to you to enter thus fully into the practical difficulties to be encountered in giving effect to those general principles which, in my despatch of the 3d of November, I laid down for your guidance in the selection of your

responsible advisers. I am in hopes that the present despatch will leave you in no doubt as to the course to be pursued by you in the event of any changes of which you may anticipate the contingency. I owed it to you to make myself clearly understood on this point; and I trust that what I have now said, will be regarded by your Council as amounting to such a declaration of my views as was requested by them in their letter of the 30th January.

I have, etc.,
(Signed) GREY.

## CXLV

## ELGIN TO EARL GREY, JULY 13, 1847 [1]

[Trans.: *Elgin-Grey Correspondence* (Canadian Archives).]

Several causes co-operate together to give to personal and party interests the overweening importance which attaches to them in the estimation of local politicians. There are no real grievances here to stir the depths of the popular mind. We are a comfortable people, with plenty to eat and drink, no privileged classes to excite envy, or taxes to produce irritation. It were ungrateful to view these blessings with regret, and yet I believe that they account in some measure for the selfishness of public men and their indifference to the higher aims of statesmanship.

The comparatively small number of members of which the popular bodies who determine the fate of provincial administrations consist, is also, I am inclined to think, unfavourable to the existence of a high order of principle and feeling among official personages. A majority of ten in an assembly of seventy may probably be, according to Cocker, equivalent to a majority of 100 in an assembly of 700. In practice, however, it is far otherwise. The defection of two or three individuals from the majority of ten puts the administration in peril. Thence the perpetual patchwork and trafficking to secure this vote and that, which (not to mention other evils) so engrosses the time and thoughts of ministers, that they have not leisure for matters of greater moment. It must also be remembered that it is only of late that the popular assemblies in this part of the world have acquired the right of determining who shall govern them—of insisting, as we phrase it, that the administration of affairs shall be conducted by persons enjoying their confidence. It is not wonderful that a privilege of this kind should be exercised at first with some degree of recklessness, and that, while no great principles of policy are at stake, methods of a more questionable character for winning and retaining the confidence of these arbiters of destiny should be resorted to. My course in these circumstances, is, I think, clear and plain. It may be somewhat difficult to follow occasionally, but I feel no doubt as to the direction in which it lies. I give to my ministers all constitutional support, frankly and without reserve, and the benefit of the best advice that I can afford them in their difficulties. In return for this, I expect that they will, in so far as it is possible for them to do so, carry out my views for the maintenance of the connexion with Great Britain and the advancement of the interests of the province. On this tacit understanding we have acted together harmoniously up to this time, although I have never concealed from them that I intended to do nothing which may prevent me from working cordially with their opponents, if they are forced upon me. That ministries and oppositions should occasionally change places, is of the very essence of our constitutional system, and it is probably the most conservative element which it contains. By subjecting all sections of politicians in their turn to official responsibilities, it obliges heated partisans to place some restraint on passion, and to confine within the bounds of decency the patriotic zeal with which, when out of place, they are wont to be animated. In order, however, to secure these advantages, it is indispensable that the head of the Government should show that he has confidence in the loyalty of all the influential parties with which he has to deal, and that he should have no personal antipathies to prevent him from acting with leading men.

I feel very strongly that a Governor-General, by acting upon these views with tact and firmness, may hope to establish a moral influence in the province which

[1] For Elgin's rule in Canada, see Wrong, *Lord Elgin* (London, 1905); Kennedy, *Elgin* (Oxford, 1926); Morison, *Lord Elgin* (London, 1928).

will go far to compensate for the loss of power consequent on the surrender of patronage to an executive responsible to the local Parliament. Until, however, the functions of his office, under our amended colonial constitution, are more clearly defined—until that middle term which shall reconcile the faithful discharge of his responsibility to the Imperial Government and the province with the maintenance of the quasi-monarchical relation in which he now stands towards the community over which he presides, be discovered and agreed upon, he must be content to tread along a path which is somewhat narrow and slippery, and to find that incessant watchfulness and some dexterity are requisite to prevent him from falling, on the one side into the *néant* of mock sovereignty, or on the other into the dirt and confusion of local factions.

## CXLVI

## ELGIN TO LADY ELGIN,[1] 1847

[Trans.: T. Walrond, *Letters and Journals of Lord Elgin*. 2nd ed: London, 1873.]

I still adhere to my opinion that the real and effectual vindication of Lord Durham's memory and proceedings will be *the success of a Governor-General of Canada who works out his views of government fairly*. Depend upon it, if this country is governed for a few years satisfactorily, Lord Durham's reputation as a statesman will be raised beyond the reach of cavil. I do not indeed know whether I am to be the instrument to carry out this work, or be destined, like others, who have gone before me, to break down in the attempt; but I am still of opinion that the thing may be done, though it requires some good-fortune and some qualities not of the lowest order. I find on my arrival here a very weak Government, almost as much abused by their friends as by their foes, no civil or private secretary, and an immense quantity of arrears of business. It is possible, therefore, that I may not be able to bear up against the difficulties of my situation, and that it may remain for some one else to effect that object, which many reasons would render me so desirous to achieve.

## CXLVII

## ELGIN TO EARL GREY

[Trans.: *Imperial Blue Books relating to Canada*, vol. xv.]

Government House, Montreal,
*April* 30, 1849.

My Lord,

I regret to state that rioting, attended with some consequences much to be regretted, though happily with no injury to life, or, except in one instance, to person, has taken place in the city of Montreal during the last few days. I hasten to furnish your Lordship with an account of what has actually occurred, lest you should be misled by exaggerated reports conveyed through the United States.

2. In consequence of the unexpected arrival of vessels with merchandize at the Port of Quebec, it became necessary for me to proceed, on a short notice, to Parliament, on Wednesday last, in order to give the Royal Assent to a Customs Bill which had that day passed the Legislative Council; and I considered that, as this necessity had arisen, it would not be expedient to keep the public mind in suspense by omitting to dispose, at the same time, of the other Acts in which the two branches of the local Parliament had at an earlier period of the session concurred, and which still awaited my decision. Among these was the Act to provide for the indemnification of parties in Lower Canada whose property was destroyed during the Rebellion in 1837 and 1838, with respect to which, as your Lordship is aware, much excitement has unhappily been stirred.

3. I herewith enclose, for your Lordship's perusal, a printed copy of the Act in question, and I shall not fail by the first mail to furnish you with full information respecting its character and objects, the circumstances which led to its introduction, and the grounds on which I resolved, after much reflection, to sanction it. No money can be paid under it as indemnity for a considerable

[1] Daughter of lord Durham.

period, so that Her Majesty's power of disallowance can be exercised with effect, should Her Majesty be so advised, notwithstanding the course which I have taken. As I am writing this Despatch in haste, with a view to its transmission by way of New York, I shall confine myself for the present to a statement of the proceedings by which the peace of the city has been disturbed.

4. In order, however, to render this narrative intelligible, I must premise that for some time past the House of Assembly, as at present constituted, has been the object of bitter denunciation, and not unfrequently of reckless menace, on the part of a certain portion of the press of the province, and more especially of that of Montreal. Your Lordship will probably recollect that the body in question is the product of a general election which took place about 18 months ago, under the auspices of the political party now in opposition, and after a dissolution, to which I had recourse on their advice, for the purpose of strengthening them in their position as a Government. The result of this measure was in the last degree unfavourable to those who had recommended it; not, however, so much so in Lower Canada, where the complexion of the representation was little affected by the dissolution, as in the Upper Province, where several constituencies, among which were some of the most populous, rejected conservative in favour of liberal candidates. On a question of confidence raised at the commencement of the session, immediately after the general election, the Administration was defeated by a majority of more than two to one, and a change of Government, as a matter of course, ensued.

5. This alteration in the political complexion of the Assembly, and the change of Government consequent upon it, were therefore clearly and distinctly traceable to a revulsion of sentiment in the British constituencies of Upper Canada. In Lower Canada nothing had occurred to account for either. This circumstance has, however, failed to secure for the decisions of the popular representative body either forbearance or respect from a certain section of those who profess to be emphatically the supporters of British interests. To denounce the Parliament as French in its composition, and the Government as subject to French influences, has been their constant object, and the wildest doctrines have been broached with respect to the right which belongs to a British minority of redressing by violence any indignity to which it may be subjected from such a source. I have now before me an article that appeared in one of the principal English newspapers of Montreal at a very early period of the session, of which I transcribe the concluding paragraph, as illustrative of the temper and language in which, even at that time, and before the public mind had been excited by the discussion of the Rebellion Losses Bill, a portion of the press ventured to criticise the proceedings of the local Parliament. The article treats of a measure affecting the townships, to which, I believe, no great objection was raised in Parliament. It terminates, however, in the words—"We are very glad of it—the sooner the "cloven foot is made visible the better; the obvious intention of that majority, "composed of Frenchmen, aided by traitorous British Canadians, is to force "French institutions still further upon the British minority in Lower Canada. "The intention is obvious, as we said, and we are glad that it is openly shown. "We trust that the party of the Government will succeed in every one of "their obnoxious measures. When French tyranny becomes insupportable we "shall find our Cromwell. Sheffield, in the olden times, used to be famous for "it keen and well-tempered whittles; well, they make bayonets there now, just "as sharp and just as well-tempered. When we can stand tyranny no longer, "it will be seen whether good bayonets in Saxon hands will not be more than "a match for a mace and a majority."

6. To persons accustomed to the working of constitutional government in well-ordered communities, it may seem incredible that such language should be employed by the organs of any respectable party in reference to a body comprising the freely-chosen representatives of a constituency, formed on a most popular basis; but the cause of the anomaly is apparent enough to all who are acquainted with the history of Canada.—For a series of years the popular representative body and the Executive, supported by the Legislative Council, were, in the Lower Province especially, in a condition of almost constant antagonism. To revile the one was the surest test of patriotism; to denounce the other, of loyalty. In a society singularly democratic in its structure, where diversities of race supplied special elements of confusion, and where consequently it was most important that constituted authority should be respected, the moral influence

of law and Government was enfeebled by the existence of perpetual strife between the powers that ought to have afforded to each other a mutual support. No state of affairs could be imagined less favourable to the extinction of national animosities, and to the firm establishment of the gentle and benignant control of those liberal institutions which it is England's pride and privilege to bestow upon her children.

7. I am not without hope that a steady adherence to the principles of constitutional government, and the continuance of harmony between the co-ordinate branches of the Legislature, may lead in process of time to the correction of these evils; meanwhile, however, I must ascribe mainly to the cause which I have assigned the tone of arrogant defiance with which the resolutions, not of the Government only, but also of the Parliament are treated by parties who happen for the moment to be unable to make their views prevail with either, and the acts of violence to which this inflammatory language has in the present instance led.

8. That many persons conscientiously disapprove of the measure respecting rebellion losses in Lower Canada which has been introduced by the Government, and which the local Parliament has passed by large majorities, and that in the minds of others it stirs national antipathies and recollections of former conflicts, which designing politicians seek to improve to their own selfish ends, cannot I fear, be doubted. It is therefore emphatically a measure which should have been approached with calmness and caution, by all at least who are not directly interested in the issue. Unfortunately, however, this has been by no means the case. Not only have appeals to passion of the most reckless description proceeded from the local press, but they have received encouragement from quarters from which they had little right to look for it. Passages such as the following, in which a London journal of influence treats of the British population as affected by the measure in question:—"They are tolerably able to take care of themselves, and "we very much misconstrue the tone adopted by the English press and English "public in the province if they do not find some means of resisting the heavy "blow and great discouragement which is aimed at them," are read with avidity, and construed to mean that sympathy will be extended from influential quarters at home to those who seek to annul the obnoxious decision of the local Legislature, whatever be the means to which they resort for the attainment of that end.

9. The scenes by which the city of Montreal has been lately disgraced, are the natural fruits of an agitation of this character, operating on a people of excitable temper, who have been taught to believe that a race which they despise, and over which they have been wont to exercise dominion, has obtained through the operation of a constitutional system an authority which it could not otherwise have acquired. Hence, more especially, their vehement indignation against me personally, and the conviction, in many cases I doubt not perfectly sincere, that I have been guilty of a serious dereliction of duty because I have not, as my predecessors have often done before me, consented to place myself in the front of an agitation to counteract the policy of Parliament. The nature of the constitutional doctrines which practically obtain in this section of the community is curiously exemplified by the fact, that it is not the passage of the Bill by an overwhelming majority of the representatives of the people, or the acquiescence of the Council, but the consent of the Governor which furnishes the pretext for an exhibition of popular violence.

10. When I left the House of Parliament after giving the Royal Assent to several Bills, to which I have referred, I was received with mingled cheers and hootings by a crowd by no means numerous which surrounded the entrance to the building. A small knot of individuals consisting, it has since been ascertained, of persons of a respectable class in society pelted the carriage with missiles which they must have brought with them for the purpose. Within an hour after this occurrence, a notice, of which I enclose a copy, issued from one of the newspaper offices, calling a meeting in the open air. At the meeting inflammatory speeches were made. On a sudden, whether under the effect of momentary excitement, or in pursuance of a plan arranged beforehand, the mob proceeded to the House of Parliament where the members were still sitting, and breaking the windows set fire to the building and burned it to the ground. By this wanton act public property of considerable value, including two excellent libraries, has been utterly destroyed. Having achieved their object the crowd dispersed, apparently satisfied with what they had done. The members were permitted to retire unmolested,

and no resistance was offered to the military who appeared on the ground after a brief interval, to restore order, and aid in extinguishing the flames. During the two following days a good deal of excitement prevailed in the streets, and some further acts of incendiarism were perpetrated. Since then the military force has been increased, and the leaders of the disaffected party have shown a disposition to restrain their followers, and to direct their energies towards the more constitutional object of petitioning the Queen for my recall, and the disallowance of the obnoxious Bill. The proceedings of the House of Assembly will also tend to awe the turbulent. I trust therefore, that the peace of the city will not be again disturbed. The newspapers which I enclose contain full, and I believe pretty accurate, accounts of all that has occurred since Wednesday last.

11. The Ministry are blamed for not having made adequate provision against these disasters; that they by no means expected that the hostility to the Rebellion Losses Bill would have displayed itself in the outrages which have been perpetrated during the last few weeks is certain. Perhaps sufficient attention was not paid by them to the menaces of the opposition press. It must be admitted, however, that their position was one of considerable difficulty. The civil force of Montreal—a city containing about 50,000 inhabitants of different races, with secret societies and other agencies of mischief in constant activity—consists of two policemen under the authority of the Government, and seventy appointed by the Corporation. To oppose, therefore, effectual resistance to any considerable mob, recourse must be had in all cases either to the military or to a force of civilians enrolled for the occasion. Grave objections, however, presented themselves in the present instance to the adoption of either of these courses until the disposition to tumult on the part of the populace unhappily manifested itself in overt acts. More especially was it of importance to avoid any measure which might have had a tendency to produce a collision between parties on a question on which their feelings were so strongly excited. The result of the course pursued is, that there has been no bloodshed, and, except in the case of some of the ministers themselves, no destruction of private property.

12. The proceedings in the Assembly have been important. I enclose the copy of an address which has been voted to me by a majority of 36 to 16, expressive of abhorrence at the outrages which have taken place in the city of Montreal, of loyalty to the Queen, and approval of my just and impartial administration of the Government with my late as well as my present advisers. Some of the opposition approve of the course which I have taken with respect to the Rebellion Losses Bill, as appears from the speeches of Messrs. Wilson and Galt, of which reports are given in the newspapers which I enclose. Mr. Wilson is an influential member of the Upper Canada conservative party, and Mr. Galt's views are the more important, because he has been returned to Parliament only a few days ago by a Lower Canadian constituency which comprises a large British population. Generally, however, as the amendments they have moved to the address show, they desire to avoid committing themselves on this point. The votes against the Address may be thus classed: Sir A. M'Nab and his party; my late ministers and their party; and Mr. Papineau. The first acts with perfect consistency in voting as he has done on this question; for he has always contended that government conducted on British principles is unsuited to Canada. The course of the second class is less intelligible; for, until the day on which they resigned their offices into my hands, they uniformly expressed approval of the principles on which my conduct as Governor-General was guided; and these, as your Lordship well knows, have undergone no change with the change of administration. Mr. Papineau's vote conveys a useful lesson which will not, I trust, be lost on persons who had been induced to believe that the persecution of which I am now the object is really attributable to my having shown undue lenity to those who were led by him into rebellion.

13. I have now furnished your Lordship with as clear a statement of these important occurrences as I can give, and I can conclude by assuring you that the city is perfectly tranquil, and that there is no present likelihood of a renewal of disturbances. A few days will show what echo the proceedings of the violent party awaken in Upper Canada, and to what extent they are followed by reaction. Meanwhile it is my firm conviction that if this dictation be submitted to, the government of this province by constitutional means will be impossible, and that the struggle between overbearing minorities, backed by force, and majorities

resting on legality and established forms, which has so long proved the bane of Canada, driving capital from the province, and producing a state of chronic discontent, will be perpetuated. At the same time, I think that if I am unable to recover that position of dignified neutrality between contending parties which it has been my unremitting study to maintain, and from which I would appear to have been for the moment driven—not, as I firmly believe, through any fault of my own, but by the unreasoning violence of faction—it may be a question with your Lordship whether it would not be for the interests of Her Majesty's service that I should be removed from my high office to make way for one who should not indeed hold views at variance with mine with respect to the duties of a constitutional Governor, but who should have the advantage of being personally unobnoxious to any section of Her Majesty's subjects within the province.

I have, etc.,

ELGIN AND KINCARDINE.

## CXLVIII

## THE ANNEXATION MANIFESTO, 1849[1]

[Trans.: Egerton and Grant.]

To the People of Canada,

The number and magnitude of the evils that afflict our country, and the universal and increasing depression of its material interests, call upon all persons animated by a sincere desire for its welfare to combine for the purpose of inquiry and preparation, with a view to the adoption of such remedies as a mature and dispassionate investigation may suggest.

Belonging to all parties, origins, creeds, but yet agreed upon the advantage of co-operation for the performance of a common duty to ourselves and our country, growing out of a common necessity, we have consented, in view of a brighter and happier future, to merge in oblivion all past differences, of whatever character, or attributable to whatever source. In appealing to our fellow colonists to unite with us in this our most needful duty, we solemnly conjure them, as they desire a successful issue and the welfare of their country, to enter upon the task, at this momentous crisis, in the same fraternal spirit.

The reversal of the ancient policy of Great Britain, whereby she withdrew from the colonies their wonted protection in her markets, has produced the most disastrous effects upon Canada. In surveying the actual condition of the country, what but ruin or rapid decay meet the eye! Our provincial Government and civic corporations embarrassed; our banking and other securities greatly depreciated; our mercantile and agricultural interests alike unprosperous; real estate scarcely saleable upon any terms; our unrivalled rivers, lakes, and canals, almost unused; whilst commerce abandons our shores; the circulating capital, amassed under a more favourable system, is dissipated, with none from any quarter to replace it! Thus, without available capital, unable to effect a loan with foreign states or with the mother country, although offering security greatly superior to that which readily obtains money both from the United States and Great Britain, when other than colonists are the applicants. Crippled, therefore, and checked in the full career of private and public enterprise, this possession of the British Crown—our country—stands before the world in humiliating contrast with its immediate neighbours, exhibiting every symptom of a nation fast sinking to decay.

With superabundant water power, and cheap labour, especially in Lower Canada, we have yet no domestic manufactures; nor can the most sanguine, unless under altered circumstances, anticipate the home growth or advent from foreign parts, of either capital or enterprise, to embark in this great source of national wealth. Our institutions, unhappily, have not that impress of permanence which can alone impart security and inspire confidence; and the Canadian market is too limited to tempt the foreign capitalist.

Whilst the adjoining States are covered with a network of thriving railways, Canada possesses but three lines, which, together, scarcely exceed 50 miles in length, and the stock in two of which is held at a depreciation of from 50 to 80 per cent.—a fatal symptom of the torpor overspreading the land.

[1] For the history and kindred documents, see Allin and Jones, *Annexation, Preferential Trade and Reciprocity* (Toronto, 1911).

Our present form of provincial Government is cumbrous, and so expensive as to be ill suited to the circumstances of the country; and the necessary reference it demands to a distant Government, imperfectly acquainted with Canadian affairs and somewhat indifferent to our interests, is anomalous and irksome. Yet, in the event of a rupture between two of the most powerful nations of the world, Canada would become the battle-field and the sufferer, however little her interests might be involved in the cause or the issue of the contest.

The bitter animosities of political parties and factions in Canada, often leading to violence, and, upon one occasion, to civil war, seem not to have abated with time; nor is there, at the present moment, any prospect of diminution or accommodation. The aspect of parties becomes daily more threatening towards each other, and, under our existing institutions and relations, little hope is discernible of a peaceful and prosperous administration of our affairs, but difficulties will, to all appearance, accumulate until government becomes impracticable. In this view of our position, any course that may promise to efface existing party distinctions and place entirely new issues before the people must be fraught with undeniable advantages.

Among the statesmen of the mother country—among the sagacious observers of the neighbouring republic—in Canada—and in all British North America—amongst all classes, there is a strong prevailing conviction that a political revolution in this country is at hand. Such forebodings cannot readily be dispelled, and they have, moreover, a tendency to realize the events to which they point. In the meanwhile, serious injury results to Canada from the effect of this anticipation upon the more desirable class of settlers, who naturally prefer a country under fixed and permanent forms of government to one in a state of transition.

Having thus adverted to some of the causes of our present evils, we would consider how far the remedies ordinarily proposed possess sound and rational inducements to justify their adoption:—

1. "The revival of protection in the markets of the United Kingdom."

This, if attainable in a sufficient degree, and guaranteed for a long period of years, would ameliorate the condition of many of our chief interests; but the policy of the empire forbids the anticipation. Besides, it would be but a partial remedy. The millions of the mother country demand cheap food; and a second change from protection to free trade would complete that ruin which the first has done much to achieve.

2. "The protection of home manufactures."

Although this might encourage the growth of a manufacturing interest in Canada, yet, without access to the United States market, there would not be a sufficient expansion of that interest, from the want of consumers, to work any result that could be admitted as a "remedy" for the numerous evils of which we complain.

3. "A Federal Union of the British American Provinces."

The advantages claimed for that arrangement are free trade between the different provinces, and a diminished government expenditure. The attainment of the latter object would be problematical, and the benefits anticipated from the former might be secured by legislation under our existing system. The markets of the sister provinces would not benefit our trade in timber, for they have a surplus of that article in their own forests; and their demand for agricultural products would be too limited to absorb our means of supply. Nor could Canada expect any encouragement to her manufacturing industry from those quarters. A Federal Union, therefore, would be no remedy.

4. "The independence of the British North American colonies as a Federal Republic."

The consolidation of its new institutions from elements hitherto so discordant —the formation of treaties with foreign powers—the acquirement of a name and character among nations—would, we fear, prove an over-match for the strength of the new republic. And, having regard to the powerful confederacy of the States conterminous with itself, the needful military defences would be too costly to render independence a boon, whilst it would not, any more than a Federal Union, remove those obstacles which retard our material prosperity.

5. "Reciprocal free trade with the United States, as respects the products of the farm, the forest, and the mine."

If obtained, this would yield but an instalment of the many advantages which might be otherwise secured. The free interchange of such products would not

introduce manufactures to our country. It would not give us the North American continent for our market. It would neither so amend our institutions as to confer stability nor ensure confidence in their permanence; nor would it allay the violence of parties, or, in the slightest degree, remedy many of our prominent evils.

6. Of all the remedies that have been suggested for the acknowledged and insufferable ills with which our country is afflicted, there remains but one to be considered. It propounds a sweeping and important change in our political and social condition, involving considerations which demand our most serious examination. This remedy consists in a "Friendly and peaceful separation from British connexion, and a union upon equitable terms with the great North American confederacy of sovereign States."

We would premise, that towards Great Britain we entertain none other than sentiments of kindness and respect. Without her consent we consider separation as neither practicable nor desirable. But the colonial policy of the parent state, the avowals of her leading statesmen, the public sentiments of the empire, present unmistakable and significant indications of the appreciation of colonial connexion. That it is the resolve of England to invest us with the attributes, and compel us to assume the burdens of independence, is no longer problematical. The threatened withdrawal of her troops from other colonies —the continuance of her military protection to ourselves only on the condition that we shall defray the attendant expenditure, betoken intentions towards our country, against which it is weakness in us not to provide. An overruling conviction, then, of its necessity, and a high sense of the duty we owe to our country, a duty we can neither disregard nor postpone, impel us to the idea of separation; and whatever negotiations may eventuate with Great Britain, a grateful liberality on the part of Canada should mark every proceeding.

The proposed Union would render Canada a field for American capital, into which it would enter as freely for the prosecution of public works and private enterprise as into any of the present States. It would equalize the value of real estate upon both sides of the boundary, thereby probably doubling at once the entire present value of property in Canada, whilst, by giving stability to our institutions and introducing prosperity, it would raise our public, corporate, and private credit. It would increase our commerce both with the United States and foreign countries, and would not necessarily diminish to any great extent our intercourse with Great Britain, into which our products would for the most part enter on the same terms as at present. It would render our rivers and canals the highway for the immigration to, and exports from, the West, to the incalculable benefit of our country. It would also introduce manufactures into Canada as rapidly as they have been introduced into the Northern States; and to Lower Canada especially, where water privileges and labour are abundant and cheap, it would attract manufacturing capital, enhancing the value of property and agricultural produce, and giving remunerative employment to what is at present a comparatively non-producing population. Nor would the United States merely furnish the capital for our manufactures. They would also supply for them the most extensive market in the world, without the intervention of a Custom-House officer. Railways would forthwith be constructed by American capital as feeders for all the great lines now approaching our frontiers; and railway enterprise in general would doubtless be as active and prosperous among us as among our neighbours. The value of our agricultural produce would be raised at once to a par with that of the United States, while agricultural implements and many of the necessaries of life, such as tea, coffee, and sugar, would be greatly reduced in price.

The value of our timber would also be greatly enhanced by free access to the American market, where it bears a high price, but is subject to an onerous duty. At the same time there is every reason to believe that our ship-builders, as well at Quebec as on the Great Lakes, would find an unlimited market in all the ports of the American continent. It cannot be doubted that the shipping trade of the United States must greatly increase. It is equally manifest that, with them, the principal material in the construction of ships is rapidly diminishing, while we possess vast territories, covered with timber of excellent quality, which would be equally available as it is now, since under the free trade system our vessels would sell as well in England after annexation as before.

The simple and economical State Government, in which direct responsibility

to the people is a distinguishing feature, would be substituted for a system at once cumbrous and expensive.

In place of war and the alarms of war with a neighbour, there would be peace and amity between this country and the United States. Disagreement between the United States and her chief, if not only, rival among nations would not make the soil of Canada the sanguinary arena for their disputes, as under our existing relations must necessarily be the case. That such is the unenviable condition of our state of dependence upon Great Britain is known to the whole world, and how far it may conduce to keep prudent capitalists from making investments in the country, or wealthy settlers from selecting a fore-doomed battle-field for the home of themselves and their children, it needs no reasoning on our part to elucidate.

But other advantages than those having a bearing on our material interests may be foretold. It would change the ground of political contest between races and parties, allay and obliterate those irritations and conflicts of rancour and recrimination which have hitherto disfigured our social fabric. Already in anticipation has its harmonious influence been felt—the harbinger may it be hoped of a lasting oblivion of dissensions among all classes, creeds, and parties in the country. Changing a subordinate for an independent condition, we would take our station among the nations of the earth. We have now no voice in the affairs of the Empire, nor do we share in its honours or emoluments. England is our parent State, with whom we have no equality, but towards whom we stand in the simple relation of obedience. But as citizens of the United States the public service of the nation would be open to us—a field for high and honourable distinction on which we and our posterity might enter on terms of perfect equality.

Nor would the amicable separation of Canada from Great Britain be fraught with advantages to us alone. The relief to the Parent State from the large expenditure now incurred in the military occupation of the country—the removal of the many causes of collision with the United States, which result from the contiguity of mutual territories so extensive, the benefit of the larger market which the increasing prosperity of Canada would create, are considerations which in the minds of many of her ablest statesmen, render our incorporation with the United States a desirable consummation.

To the United States also the annexation of Canada presents many important inducements. The withdrawal from the borders of so powerful a nation, by whom in time of war the immense and growing commerce of the lakes would be jeopardized, the ability to dispense with the costly but ineffectual revenue establishment over a frontier of many hundred miles,—the large accession to their income from our Customs,—the unrestricted use of the St. Lawrence, the natural highway from the Western States to the ocean,—are objects for the attainment of which the most substantial equivalents would undoubtedly be conceded.

Fellow Colonists:—

We have thus laid before you our views and convictions on a momentous question, involving a change which, though contemplated by many of us with varied feelings and emotions, we all believe to be inevitable—one which it is our duty to provide for and lawfully to promote.

We address you without prejudice or partiality,—in the spirit of sincerity and truth,—in the interest of our common country,—and our single aim is its safety and welfare. If to your judgment and reason our object and aim be at this time deemed laudable and right, we ask an oblivion of past dissensions; and from all, without distinction of origin, party or creed, that earnest and cordial co-operation in such lawful, prudent and judicious means as may best conduct us to our common destiny.

## CXLIX

## ELGIN TO EARL GREY

[Trans.: T. Walrond, *op. cit.*]

Toronto,
March 23, 1850.

Lord John's speech [1] on the colonies seems to have been eminently successful at home. It is calculated, too, I think, to do good in the colonies; but for one sentence, the introduction of which I deeply implore—the sting in the tail. Alas for that sting in the tail! I much fear that when the liberal and enlightened sentiments, the enunciation of which by one so high in authority is so well calculated to make the colonists sensible of the advantages which they derive from their connection with Great Britain, shall have passed away from their memories, there will not be wanting those who will remind them that, on this solemn occasion, the Prime Minister of England, amid the plaudits of a full senate, declared that he looked forward to the day when the ties which he was endeavouring to render so easy and mutually advantageous would be severed. And wherefore this foreboding? or, perhaps, I ought not to use the term foreboding, for really to judge by the comments of the press on this declaration of Lord John's, I should be led to imagine that the prospect of these sucking democracies, after they have drained their old mother's life-blood, leaving her in the lurch, and setting up as rivals, just at the time when their increasing strength might render them a support instead of a burden, is one of the most cheering which has of late presented itself to the English imagination. But wherefore then this anticipation—if foreboding be not the correct term? Because Lord John and the people of England persist in assuming that the Colonial relation is incompatible with maturity and full development. And is this really so incontestable a truth that it is a duty not only to hold but to proclaim it? Consider for a moment what is the effect of proclaiming it in our case. We have on this continent two great empires in presence, or rather, I should say, two great Imperial systems. In many respects there is much similarity between them. In so far as powers of self-government are concerned it is certain that our colonists in America have no reason to envy the citizens of any state in the Union. The forms differ, but it may be shown that practically the inhabitants of Canada have a greater power in controlling their own destiny than those of Michigan or New York, who must tolerate a tariff imposed by twenty other states, and pay the expenses of war undertaken for objects which they profess to abhor. And yet there is a difference between the two cases; a difference, in my humble judgment, of sentiment rather than substance, which renders the one a system of life and strength, and the other a system of death and decay. No matter how raw and rude a territory may be when it is admitted as a state into the Union of the United States, it is at once, by the popular belief, invested with all the dignity of manhood, and introduced into a system which, despite the combativeness of certain ardent spirits from the South, every American believes and maintains to be immortal. But how does the case stand with us? No matter how great the advance of a British colony in wealth and civilisation; no matter how absolute the powers of self-government conceded to it, it is still taught to believe that it is in a condition of pupilage from which it must pass before it can attain maturity. For one, I have never been able to comprehend why, elastic as our constitutional system is, we should not be able, now more especially when we have ceased to control the trade of our colonies, to render the links which bind them to the British Crown at least as lasting as those which unite the component parts of the Union. . . . One thing is, however, indispensable to the success of this or any other system of Colonial Government. You must renounce the habit of telling the Colonies that the Colonial is a provisional existence. You must allow them to believe that, without severing the bonds which unite them to Great Britain, they may attain the degree of perfection, and of social and political development, to which organised communities of free men have a right to aspire.

Since I began this letter I have, I regret to say, confirmatory evidence of

[1] On February 8, 1850, lord John Russell delivered a speech in the house of commons in which he anticipated colonial independence, and stated that in making the colonies fit for such an event England would 'have the consolation of saying that [she had] contributed to the happiness of the world'.

the justice of the anticipations I had formed of the probable effect of Lord John's declaration. I enclose extracts from two newspapers, an annexationist, the *Herald* of Montreal, and a *quasi* annexationist, the *Mirror* of Toronto. You will note the use they make of it. I was more annoyed, however, I confess, by what occurred yesterday in Council. We had to determine whether or not to dismiss from his offices a gentleman who is both M.P.P., Q.C., and J.P., and who has issued a flaming manifesto in favour, not of annexation, but of an immediate declaration of independence as a step to it. I will not say anything of my own opinion on the case, but it was generally contended by the members of the Board, that it would be impossible to maintain that persons who had declared their intention to throw off their allegiance to the Queen, with a view to annexation, were unfit to retain offices granted during pleasure, if persons who make a similar declaration with a view to independence were to be differently dealt with. Baldwin had Lord John's speech in his hand. He is a man of singularly placid demeanour, but he has been seriously ill, so possibly his nerves are shaken —at any rate I never saw him so much moved. "Have you read the latter part of Lord J. Russell's speech?" he said to me. I nodded assent. "For myself," he added, "if the anticipations therein expressed prove to be well founded, my "interest in public affairs is gone for ever. But is it not hard upon us while we "are labouring, through good and evil report, to thwart the designs of those "who would dismember the Empire, that our adversaries should be informed "that the difference between them and the Prime Minister of England is only "one of time? If the British Government has really come to the conclusion that "we are a burden to be cast off whenever a favourable opportunity offers, surely "we ought to be warned."

I replied that while I regretted as much as he could do the paragraph to which he referred, I thought he somewhat mistook its import: that I believed no man living was more opposed to the dismemberment of the Empire than Lord J. Russell; that I did not conceive that he had any intention of deserting the Colonies, or of inviting them to separate from England; but that he had in the sentence in question given utterance to a purely speculative, and in my judgment most fallacious, opinion, which was shared, I feared, by very many persons both in England and the Colonies: that I held it to be a perfectly unsound and most dangerous theory, that British Colonies could not attain maturity without separation, and that my interest in labouring with them to bring into full play the principles of Constitutional Government in Canada would entirely cease, if I could be persuaded to adopt it. I said all this, I must confess however, not without misgiving, for I could not but be sensible that, in spite of all my allegations to the contrary, my audience was disposed to regard a prediction of this nature, proceeding from a Prime Minister, less as a speculative abstraction than as one of that class of prophecies which work their own fulfilment. I left the Council Chamber disheartened, with the feeling that Lord J. Russell's reference to the manhood of Colonies was more likely to be followed by practical consequences than Lamartine's famous "*quand l'heure aura sonné*" invocation to oppressed nationalities. It is possible, indeed, that I exaggerate to myself the probable effects of this declaration. Politicians of the Baldwin stamp, with distinct views and aims, who having struggled to obtain a Government on British principles, desire to preserve it, are not, I fear, very numerous in Canada; the great mass move on with very indefinite purposes, and not much inquiring whither they are going. Of one thing, however, I am confident: there cannot be any peace, contentment, progress, or credit in this colony while the idea obtains that the connection with England is a millstone about its neck which should be cast off, as soon as it can be conveniently managed. What man in his senses would invest his money in the public securities of a country where questions affecting the very foundations on which public credit rests are in perpetual agitation; or would settle in it at all if he could find for his foot a more stable resting-place elsewhere? I may, perhaps, be expressing myself too unreservedly with reference to opinions emanating from a source which I am no less disposed than bound to respect. As I have the means, however, of feeling the pulse of the colonists in this most feverish region, I consider it to be always my duty to furnish you with as faithful a record as possible of our diagnostics. And, after all, may I not with all submission ask, Is not the question at issue a most momentous one? What is it indeed but this: Is the Queen of England to be the Sovereign of an Empire, growing, expanding, strengthening itself from age to age, striking

its roots deep into fresh earth and drawing new supplies of vitality from virgin soils? Or is she to be for all essential purposes of might and power, Monarch of Great Britain and Ireland merely—her place and that of her line in the world's history determined by the productiveness of 12,000 square miles of a coal formation, which is being rapidly exhausted, and the duration of the social and political organization over which she presides dependent on the annual expatriation, with a view to its eventual alienization, of the surplus swarms of her born subjects? If Lord J. Russell, instead of concluding his excellent speech with a declaration of opinion which, as I read it, and as I fear others will read it, seems to make it a point of honour with the Colonists to prepare for separation, had contented himself with resuming the statements already made in its course, with showing that neither the Government nor Parliament could have any object in view in their Colonial policy but the good of the Colonies, and the establishment of the relation between them and the mother-country on the basis of mutual affection; that, as the idea of maintaining a Colonial Empire for the purpose of exercising dominion or dispensing patronage had been for some time abandoned, and that of regarding it as a hot-bed for forcing commerce and manufactures more recently renounced, a greater amount of free action and self-government might be conceded to British Colonies without any breach of Imperial Unity or the violation of any principle of Imperial Policy, than had under any scheme yet devised fallen to the lot of the component parts of any Federal or Imperial system; if he had left these great truths to work their effect without hazarding a conjecture which will, I fear, be received as a suggestion, with respect to the course which certain wayward members of the Imperial family may be expected to take in a contingency still confessedly remote, it would, I venture with great deference to submit, in so far at least as public feeling in the Colonies is concerned, have been safer and better.

You draw, I know, a distinction between separation with a view to annexation and separation with a view to independence. You say the former is an act of treason, the latter a natural and legitimate step in progress. There is much plausibility doubtless in this position, but, independently of the fact that no one advocates independence in these Colonies except as a means to the end, annexation, is it really tenable? If you take your stand on the hypothesis that the Colonial existence is one with which the Colonists ought to rest satisfied, then, I think, you are entitled to denounce, without reserve or measure, those who propose, for some secondary object, to substitute the Stars and Stripes for the Union Jack. But if, on the contrary, you assume that it is a provisional state, which admits of but a stunted and partial growth, and out of which all communities ought in the course of nature to strive to pass, how can you refuse to permit your colonies here, when they have arrived at the proper stage in their existence, to place themselves in a condition which is at once most favourable to their security and to their perfect national development? What reasons can you assign for the refusal, except such as are founded on selfishness, and are, therefore, morally worthless? If you say that your great lubberly boy is too big for the nursery, and that you have no other room for him in your house, how can you decline to allow him to lodge with his elder brethren over the way, when the attempt to keep up an establishment for himself would seriously embarrass him?

## CL

## ELGIN TO EARL GREY

[Trans.: T. Walrond, *op. cit.*]

Toronto,
*November* 1, 1850.

Sir H. Bulwer spent four days with us, and for many reasons I am glad that he has been here. He leaves us knowing more of Canada than he did when he came. I think too that both he and Sir E. Head return to their homes re-assured on many points of our internal policy, on which they felt doubtful before, and much enlightened as to the real position of men and things in this province.

With one important truth I have laboured to impress them, and I hope successfully. It is this: that the faithful carrying out of the principles of Constitutional Government is a departure from the American model, not an approxi-

mation to it, and, therefore, a departure from republicanism in its only workable shape. Of the soundness of this view of our case I entertain no doubt whatever; and though I meet with few persons to whom it seems to have occurred (for the common belief of superficial observers is that we are republicanising the colonies), I seldom fail in bringing it home to the understanding of any intelligent person with whom I have occasion to discuss it. The fact is, that the American system is our old Colonial system with, in certain cases, the principle of popular election substituted for that of nomination by the Crown. Mr. Filmore stands to his Congress very much in the same relation in which I stood to my Assembly in Jamaica. There is the same absence of effective responsibility in the conduct of legislation, the same want of concurrent action between the parts of the political machine. The whole business of legislation in the American Congress, as well as in the State Legislatures, is conducted in the manner in which railway business was conducted in the House of Commons at a time when it is to be feared that, notwithstanding the high standard of honour in the British Parliament, there was a good deal of jobbing. For instance, our Reciprocity measure was pressed by us at Washington last session, just as a Railway Bill in 1845 or 1846 would have been pressed in Parliament. There was no Government to deal with. The interests of the Union, as a whole and distinct from local and sectional interests, had no organ in the representative bodies; it was all a question of canvassing this member of Congress or the other. It is easy to perceive that, under such a system, jobbing must become not the exception but the rule.

Now I feel very strongly, that when a people have been once thoroughly accustomed to the working of such a Parliamentary system as ours, they never will consent to revert to this clumsy irresponsible mechanism. Whether we shall be able to carry on the war here long enough to allow the practice of Constitutional Government and the habits of mind which it engenders to take root in these provinces, may be doubtful. But it may be worth your while to consider whether these views do not throw some light on affairs in Europe. If you part with constitutional monarchies there, you may possibly get something much more democratic; but you cannot, I am confident, get American republicanism. It is the fashion to say, "of course not; we cannot get their federal system;" but this is not the only reason, there are others that lie deeper. Look at France, where they are trying to jumble up the two things, a head of the State responsible to the people who elect him, and a ministry responsible to the Government.

## CLI

## ELGIN TO EARL GREY

[Trans.: T. Walrond, *op. cit.*]

Toronto, *December* 17, 1850.

Although, as you observe, it seems to be rather idle in us to correspond on what may be termed speculative questions, when we have so much pressing business on hand, I venture to say a few words in reply to your letter of the 23rd ult., firstly, because I presume to dissent from some of the opinions which you advance in it; and, secondly, because I have a practical object of no small importance in view in calling your attention to the contrasts which present themselves in the working of our institutions and those of our neighbours in the States. My practical object is this: when you concede to the Colonists Constitutional Government in its integrity, you are reproached with leading them to Republicanism and the American Union. The same reproach is hurled with anathemas against your humble servant. Lord Stanley, if I rightly remember, in the debate on Ryland's case last year, stated amid cheers, that if you were in the habit of consulting the ministers of the Crown in the Colony before you placed persons on the colonial pension list, he had no hesitation in saying you had already established a republic in Canada! Now, I believe, on the contrary, that it may be demonstrated that the concession of Constitutional Government has a tendency to draw the Colonists the other way; firstly, because it slakes that thirst for self-government which seizes on all British communities when they approach maturity; and, secondly, because it habituates the Colonists to the working of a political mechanism, which is both intrinsically superior to that of the Americans, and more unlike it than our old Colonial system.

Adopting, however, the views with respect to the superiority of the mechanism of our political system to that of our neighbours, which I have ventured to urge, you proceed to argue that the remedy is in their hands; that without abandoning their republicanism they and their *confrères* in France have nothing to do but to dismiss their Presidents and to substitute our constitution without a King, the body without the head, for their own, to get rid of the inconveniences which they now experience; and you quote with approbation, as an embodiment of this idea, the project submitted by M. Grévy and the Red Republicans to the French Constituent Assembly.

Now here I confess I cannot go along with you, and the difference between us is a very material one; for if the monarch be not an indispensable element in our constitutional mechanism, and if we can secure all the advantages of that mechanism without him, I have drawn the wrong moral from the facts. You say that the system the Red Republicans would have established in France would have been the nearest possible approach to our own. It is possible, I think, that we may be tending towards the like issues. It is possible, perhaps probable, that as the House of Commons becomes more democratic in its composition, and consequently more arrogant in its bearing, it may cast off the shackles which the other powers of the State impose on its self-will, and even utterly abolish them; but I venture to believe that those who last till that day comes, will find that they are living under a very different constitution from that which we now enjoy; that they have traversed the interval which separates a temperate and cautious administration of public affairs resting on the balance of powers and interests, from a reckless and overbearing tyranny based on the caprices and passions of an absolute and irresponsible body. You talk somewhat lightly of the check of the Crown, although you acknowledge its utility. But is it indeed so light a matter, even as our constitution now works? Is it a light matter that the Crown should have the power of dissolving Parliament; in other words, of deposing the tyrant at will? Is it a light matter that for several months in each year the House of Commons should be in abeyance, during which period the nation looks on Ministers not as slaves of Parliament, but servants of the Crown? Is it a light matter that there should still be such respect for the monarchical principle, that the servants of that visible entity yclept the Crown are enabled to carry on much of the details of internal and foreign administration without consulting Parliament, and even without its cognisance? Or do you suppose that the Red Republicans, when they advocated the nomination of a Ministry of the House of Assembly with a revocable *mandat*, intended to create a Frankenstein endowed with powers in some cases paramount to, and in others running parallel with, the authority of the omnipotent body to which it owed its existence? My own impression is, that they meant a set of delegates to be appointed, who should exercise certain functions of legislative initiation and executive patronage so long as they reflected clearly, in the former the passions, and in the latter the interests of the majority for the time being, and no longer.

It appears to me, I must confess, that if you have a republican form of government in a great country, with complicated internal and external relations, you must either separate the executive and legislative departments, as in the United States, or submit to a tyranny of the majority, not the more tolerable because it is capricious and wielded by a tyrant with many heads. Of the two evils I prefer the former.

Consider, for a moment, how much more violent the proceedings of majorities in the American Legislatures would be, how much more reckless the appeals to popular passion, how much more frequently the permanent interests of the nation and the rights of individuals and classes would be sacrificed to the object of raising political capital for present uses, if debates or discussions affected the tenure of office. I have no idea that the executive and legislative departments of the State can be made to work together with a sufficient degree of harmony to give the maximum of strength and of mutual independence to secure freedom and the rights of minorities, except under the presidency of Monarchy, the moral influence of which, so long as a nation is monarchical in its sentiments, cannot, of course, be measured merely by its recognized power.

## CLII

## ELGIN TO MR. CUMMING BRUCE

[Trans.: T. Walrond, *op. cit.*]

*September*, 1852.

As respects the *matter* of the report,[1] I am disposed to believe that, viewing the question with reference to personal interests exclusively, my removal from hence would not be any disadvantage to me. But, as to my work here,—there is the rub. Is it to be all undone? On this point I must speak frankly. I have been possessed (I use the word advisedly, for I fear that most persons in England still consider it a case of *possession*) with the idea that it is possible to maintain on this soil of North America, and in the face of Republican America, British connection and British institutions, if you give the latter freely and trustingly. Faith, when it is sincere, is always catching; and I have imparted this faith, more or less thoroughly, to all Canadian statesmen with whom I have been in official relationship since 1848, and to all intelligent Englishmen with whom I have come in contact since 1850—as witness Lord Wharncliffe, Waldegrave, Tremenheere, etc., etc. Now if the Governor ceases to possess this faith, or to have the faculty of imparting it, I confess I fear that, ere long, it will become extinct in other breasts likewise. I believe that it is equally an error to imagine with one old-fashioned party, that you can govern such dependencies as this on the antiquated bureaucratic principle, by means of rescripts from Downing Street, in defiance of the popular legislatures, and on the hypothesis that one local faction monopolises all the loyalty of the Colony; and to suppose with the Radicals that all is done when you have simply told the colonists "to go to the devil their own way." I believe, on the contrary, that there is more room for the exercise of influence on the part of the Governor under my system than under any that ever was before devised; an influence, however, wholly moral—an influence of suasion, sympathy, and moderation, which softens the temper while it elevates the aims of local politics.

It is true that on certain questions of public policy, especially with regard to Church matters, views are propounded by my ministers which do not exactly square with my pre-conceived opinions, and which I acquiesce in, so long as they do not contravene the fundamental principles of morality, from a conviction that they are in accordance with the general sentiments of the community.

It is true that I do not seek the commendation bestowed on Sir F. Head for bringing men into his councils from the Liberal party, and telling them that they should enjoy only a partial confidence; thereby allowing them to retain their position as tribunes of the people in conjunction with the *prestige* of advisers of the Crown by enabling them to shirk responsibility for any acts of government which are unpopular. It is true that I have always said to my advisers, "while you continue my advisers you shall enjoy my unreserved confidence; and *en revanche* you shall be responsible for all acts of government."

But it is no less certain that there is not one of them who does not know that no inducement on earth would prevail with me to bring me to acquiesce in any measure which seemed to me repugnant to public morals, or Imperial interests; and I must say that, far from finding in my advisers a desire to entrap me into proceedings of which I might disapprove, I find a tendency constantly increasing to attach the utmost value to my opinion on all questions, local or general, that arise.

## CLIII

## ELGIN TO THE DUKE OF NEWCASTLE

[Trans.: T. Walrond, *op. cit.*]

Quebec, *February* 18, 1853.

Now that the bonds formed by commercial protection and the disposal of local offices are severed, it is very desirable that the prerogative of the Crown, as the fountain of honour, should be employed, in so far as this can properly be done, as a means of attaching the outlying parts of the empire to the throne. Of the soundness of this proposition as a general principle no doubt can, I presume,

[1] i.e. Lord Elgin's rumoured recall by the new ministry under lord Derby.

be entertained. It is not, indeed, always easy to apply it in these communities, where fortunes are precarious, the social system so much based on equality, and public services so generally mixed up with party conflicts. But it should never, in my opinion, be lost sight of, and advantage should be taken of all favourable opportunities to act upon it.

There are two principles which ought, I think, as a general rule to be attended to in the distribution of Imperial honours among colonists. Firstly, they should appear to emanate directly from the Crown, on the advice, if you will, of the Governors and Imperial Ministers, but not on the recommendation of the local executives. And, secondly, they should be conferred, as much as possible, on the eminent persons who are no longer actively engaged in political life. If these principles be neglected, such distinctions will, I fear, soon lose their value.

## CLIV

## ELGIN TO THE DUKE OF NEWCASTLE

[Trans.: T. Walrond, *op. cit.*]

*March* 26, 1853.

It is argued that, by the severance of the connection, British statesmen would be relieved of an onerous responsibility for colonial acts of which they cannot otherwise rid themselves. Is there not, however, some fallacy in this? If by conceding absolute independence the British Parliament can acquit itself of the obligation to impose its will upon the Colonists, in the matter, for instance, of a Church Establishment, can it not attain the same end by declaring that, as respects such local questions, the Colonists are free to judge for themselves? How can it be justifiable to adopt the former of these expedients, and sacrilegious to act upon the latter?

The true policy, in my humble judgment, is to throw the whole weight of responsibility on those who exercise the real power, for, after all, the sense of responsibility is the best security against the abuse of power; and, as respects the connection, to act and speak on this hypothesis—that there is nothing in it to check the development of healthy national life in these young communities. I believe that this policy will be found to be not only the safest, but also (an important consideration in these days) the most economical.

## CLV

## ELGIN TO THE COLONIAL SECRETARY, SIR GEORGE GREY

[Trans.: T. Walrond, *op. cit.*]

Quebec, *December* 18, 1854.

I readily admit that the maintenance of the position and due influence of the Governor is one of the most critical problems that have to be solved in the adaptation of Parliamentary Government to the Colonial system: and that it is difficult to over-estimate the importance which attaches to its satisfactory solution. As the Imperial Government and Parliament gradually withdraw from legislative interference, and from the exercise of patronage in Colonial affairs the office of Governor tends to become, in the most emphatic sense of the term, the link which connects the Mother Country and the Colony, and his influence the means by which harmony of action between the local and Imperial authorities is to be preserved. It is not, however, in my humble judgment, by evincing an anxious desire to stretch to the utmost constitutional principles in his favour, but on the contrary, by the frank acceptance of the conditions of the Parliamentary system, that this influence can be most surely extended and confirmed. Placed by his position above the strife of parties—holding office by a tenure less precarious than the ministers who surround him—having no political interests to serve but that of the community whose affairs he is appointed to administer—his opinion cannot fail, when all cause for suspicion and jealousy is removed, to have great weight in the Colonial Councils, while he is set at liberty to constitute himself in an especial manner the patron of those larger and higher interests—such interests, for example, as those of education, and of moral and material

progress in all its branches—which, unlike the contests of party, unite instead of dividing the members of the body politic. The mention of such influences as an appreciable force in the administration of public affairs may provoke a sneer on the part of persons who have no faith in any appeal which is not addressed to the lowest motives of human conduct; but those who have juster views of our common nature, and who have seen influences that are purely moral wielded with judgment, will not be disposed to deny to them a high degree of efficacy.

## CLVI

## CLERGY RESERVES ACT 1854

(18 Victoria, c. 2.)

*An act to make better provision for the appropriation of Moneys arising from the Lands heretofore known as the Clergy Reserves, by rendering them available for Municipal purposes.*

(Assented to 18th December, 1854.)

Preamble. Whereas, by the Act of the Parliament of Great Britain, passed in the Session held in the thirty-first year of the Reign of His Majesty King George the Third, and intituled, An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province," it is among other things enacted, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the Provinces of Upper Canada and of Lower Canada respectively, or the person administering the Government therein, to make from out of the Lands of the Crown within such Provinces, such allotment and appropriation of lands, as therein mentioned, for the support and maintenance of a Protestant Clergy within the same; and it was further enacted, That all and every the rents, profits and emoluments which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applicable solely for the maintenance and support of a Protestant Clergy within the Province in which the same should be situated, and to no other purpose whatever. And whereas in pursuance of the said Act, such allotments and appropriations of land as aforesaid, have been from time to time reserved for the purposes therein mentioned, which lands are known in this Province by the name of The Clergy Reserves; And whereas by another Act of the Parliament of the United Kingdom, passed in the Session held in the seventh and eighth years of the Reign of King George the Fourth, and intituled, An Act to authorize the Sale of a part of the Clergy Reserves in the Provinces of Upper and Lower Canada, the Governor, Lieutenant Governor or Person administering the Government of the said Provinces, or either of them, was empowered with the consent of the Executive Council of such Province, and in pursuance of His Majesty's instructions, to sell and convey in fee simple, or any less estate or interest, a part of the said Clergy Reserves in each of the said Provinces, not exceeding in either Province one fourth part of the reserves within the same, nor exceeding one hundred thousand acres in either of them in any one year, and it was enacted that the proceeds of such sales should, by the proper officers, be invested in the Public Funds of the United Kingdom, and that the Dividends and Interest of the moneys so invested should be appropriated in the manner provided by the said last mentioned Act; and further, that it should be lawful for the Governor, Lieutenant Governor, or person administering the Government of either of the said Provinces, with the consent of the Executive Council thereof, and in pursuance of His Majesty's instructions, to give or grant in exchange for any part of the said Clergy Reserves any lands within the said Province, of equal value with such Clergy Reserves so to be taken in exchange, or to accept in exchange for any such Clergy Reserves from any person or persons any lands of equal value, and that any lands so taken in exchange for any such Clergy Reserves should be holden by the Crown in trust for the purposes to which the Clergy Reserves were appropriated by the Acts firstly and secondly above cited: And whereas by another Act of the said Parliament, passed in the Session held in the third and fourth years of Her Majesty's Reign intituled, An Act to provide for the sale of the Clergy Reserves in the Province of Canada, and for

Imp. Act 31 G. 3, c. 31, cited.

Imp. Act 7 and 8 G. 4, c. 62, cited.

Imp. Act 3 and 4 V. c. 78 cited.

the distribution of the proceeds thereof, other and further provision is made for the sale of the whole of the said Clergy Reserves, and for the investment of the proceeds of such sale, and the distribution of the Interest and Dividends on such investments, and of the Interest on Sales of Clergy Reserves on credit or rents arising from Clergy Reserves demised for a term of years, subject to the provision that the quantity of the said Clergy Reserves so to be sold in any one year, shall not in the whole exceed One Hundred Thousand Acres, without the previous approbation in writing of one of Her Majesty's Principal Secretaries of State, and to other the restrictions and conditions in the said Act mentioned and imposed; and so much of the Act herein first cited as relates to any reservations of land to be made after the passing of the Act herein last cited, in Upper Canada or Lower Canada, for the support and maintenance of a Protestant Clergy, is repealed; And whereas by another Act of the said Parliament passed in the sixteenth year of Her Majesty's Reign, and intituled An Act to authorize the Legislature of the Province of Canada to make provision concerning the Clergy Reserves in that Province, and the proceeds thereof, it is in effect enacted, That it shall be lawful for the Legislature of the Province of Canada, from time to time, by any Act or Acts to be for that purpose made and enacted in the manner and subject to the conditions required by the Act of the said Parliament passed in the Session thereof held in the third and fourth years of Her Majesty's Reign, and intituled, An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, sections thirty-seven, thirty-eight and thirty-nine, in respect of Acts made and enacted by the said Legislature, to vary or repeal all or any of the provisions of the Act herein last above cited for or concerning the sale, alienation or disposal of the said Clergy Reserves, and for or concerning the investment of the proceeds of all sales then made or thereafter to be made of such Reserves, and for or concerning the appropriation and application of such proceeds and investments, the interests and dividends accruing on Sales on Credit of such Reserves, the Rents of such Reserves for the time being unsold, and all other the profits of or accruing from such Reserves, and (notwithstanding the said Act herein thirdly above cited) to make such other provisions for or concerning the sale, alienation or disposal of the said Clergy Reserves, and such investments as aforesaid, and for or concerning the appropriation and application of such Clergy Reserves, proceeds, investments, interests, dividends, rents and profits, as to the said Legislature, may seem meet; subject to the proviso that it shall not be lawful for the said Legislature by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual stipends or allowances which have been already assigned and given to the Clergy of the Churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada, (and to which the faith of the Crown is pledged) during the natural lives or incumbencies of the parties now receiving the same, or to appropriate or apply to any other purposes, such part of the said proceeds, investments, interests, dividends, rents and profits as may be required to provide for the payment of such stipends and allowances during such lives and incumbencies: And whereas it is expedient to alter in certain particulars the provisions of the Act thirdly above cited, touching the matters subjected by the Act fourthly above cited to the control of the Legislature of this Province; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Provinces of Upper Canada and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, as follows:

Imp. Act 16 V. c. 21 cited.

Union Act cited

1. The moneys arising from the Clergy Reserves in Upper Canada shall continue to form a separate Fund which shall be called The Upper Canada Municipalities Fund, and the moneys arising from the Clergy Reserves in Lower Canada, shall continue to form a separate Fund, which shall be called The Lower Canada Municipalities Fund:

Proceeds of Reserves to form two funds one for U. C. and one for L. C.

2. The Municipalities Fund for each section of the Province respectively, shall consist of all moneys arising from the sale of Clergy Reserves in that section of the Province, whether now funded or invested either in the United Kingdom or in this Province, or remaining uninvested, or hereafter to arise from such sales, the Interest and Dividends of moneys forming part of such Fund, the interest

Of what such funds shall respectively consist.

upon Sales of Clergy Reserves in that Section of the Province, on credit, and rents, issues and profits arising from Clergy Reserves therein demised or to be demised for any term of years, and other casual and periodical incomings arising from Clergy Reserves therein, after deducting therefrom the actual and necessary expenses attending the sales of the said Clergy Reserves and of managing the same and the Funds aforesaid: and the moneys forming the said Funds shall be paid into the hands of the Receiver General and shall be by him applied to the purposes hereinafter mentioned, under the authority of this Act, or any General or Special Order or Orders to be made by the Governor in Council.

Moneys to be in Receiver General's hands for the purposes of this Act.

Annual stipends and allowances charged on the reserves before the last Imp. Act, to be payable during the lives or incumbency of the present recipients.

II. The annual stipends or allowances which had been before the passing of the Act of the Parliament of the United Kingdom, passed in the sixteenth year of Her Majesty's Reign, and cited in the Preamble to this act, assigned or given to the Clergy of the Churches of England and Scotland, or to any other Religious Bodies or denominations of Christians in either Section of the Province, and chargeable under the Act of the said Parliament on the Clergy Reserves in such Section, (and to which the faith of the Crown is pledged), shall, during the natural lives or incumbencies of the parties receiving the same at the time of the passing of the said Act, be the first charge on the Municipalities Fund for that Section of the Province, and shall be paid out of the same in preference to all other charges or expenses whatever: Provided always, that the annual allowance heretofore payable to the Roman Catholic Church in Upper Canada, and to the British Wesleyan Methodist Church for Indian Missions, shall continue to be payable during the twenty years next after the passing of this Act, and no longer.

Proviso as to certain Religious Bodies.

Recital.

Provincial government, with consent of parties interested, may commute such stipends, etc. for their value in money.

III. And whereas it is desirable to remove all semblance of connection between Church and State, and to effect an entire and final disposition of all matters, claims and interests arising out of the Clergy Reserves by as speedy a distribution of their proceeds as may be: Be it therefore enacted, that the Governor in Council may, whenever he may deem it expedient, with the consent of the parties and Bodies severally interested, commute with the said parties such annual stipend or allowance for the value thereof, to be calculated at the rate of six per cent. per annum, upon the probable life of each individual; and in the case of the Bodies above particularly specified in the second section of this Act, at the actual value of the said allowance at the time of commutation to be calculated at the rate aforesaid: and such commutation shall be paid accordingly out of that one of the Municipalities Funds upon which such stipend or allowance is made chargeable by this Act: Provided always, that no commutation shall take place but within one year next after the passing of this Act: Provided also, that in case of commutation with either of the said Bodies or Denominations, it shall not be lawful for them or either of them to invest the moneys paid for such commutation, or any part thereof, in Real Property of any kind whatsoever, under penalty of forfeiting the same to Her Majesty; and that the said Bodies or Denominations shall lay before the Legislature whenever called on so to do, a statement of the manner in which the said moneys shall have been invested or appropriated.

Proviso.

Proviso: commutation money to Religious Bodies not to be invested in real property, etc.

Sufficient of such funds to be retained to pay stipends, etc., while chargeable on the said Funds.

IV. So long as any such stipend or allowance shall be chargeable upon either of the said Municipalities Funds, a portion of such Fund producing annually interest sufficient to pay every such stipend or allowance then chargeable thereon, shall be retained by the Receiver General, and appropriated for that purpose, and if not already invested shall be by him invested in Public British Securities, or in any Provincial Debentures or Securities which under the Act to establish freedom of Banking or any Act amending the same, may be accepted by the Receiver General in exchange for registered Bank notes, as the Governor in Council shall from time to time direct; and the Receiver General, being thereunto authorized by order of the Governor in Council, shall have full power to dispose of any Securities in which such moneys are or shall be invested, and to invest the proceeds in any other such Securities as aforesaid, or to apply them to the payment of the commutation aforesaid.

Investment of sums so retained.

Yearly division of unappropriated balance among the Municipalities in each section of the province respectively, according to population.

V. The amount of the Municipalities Fund in and for either Section of the Province remaining unexpended and unappropriated under the foregoing provisions of this Act, on the thirty-first day of December in each year, shall, by the Receiver General, be apportioned equally among the several County and City Municipalities in the same Section of the Province, in proportion to the population of such Municipalities respectively according to the then last Census made either under the Act to provide more effectually for taking a periodical Census of the Province, or any other Act under which Census may be legally

taken of the Municipalities in either section of the Province; and the portion thereof coming to each Municipality shall be paid over by the Receiver General to the Treasurer, Chamberlain or other Officer having the legal custody of the moneys of such Municipality, without other authority than this Act, and shall make part of the General Funds of the Municipality, and be applicable to any purpose to which such Funds are applicable: Provided always, that if at the time when such payment is to be made, any sum of money shall be payable by any such Municipality to the Receiver General for any cause whatever, and shall be overdue, he may retain in his hands in satisfaction or part satisfaction thereof, the sum which would otherwise be payable to such Municipality, or so much thereof as may be equal to the sum so payable to him by the Municipality and overdue, and shall deliver to the Treasurer, Chamberlain or other Officer as aforesaid, a discharge in favor of the Municipality for a sum equal to that so retained by him; and for the purposes of this section, each Municipality into which any County in Lower Canada may be at the time divided, and each Union of Counties for Municipal purposes in Upper or Lower Canada, shall be taken to be a County Municipality.

Proviso: if the Municipality have money to pay to the Receiver General.

What shall be deemed a Municipality.

VI. So much of the Act thirdly cited in the Preamble of this Act as limits the quantity of lands forming part of the Clergy Reserves which may be sold in any one year without the previous approbation in writing of one of Her Majesty's Principal Secretaries of State, and so much of the said Act as makes any appropriation of any moneys forming part of the Clergy Reserves Fund, or arising from the sale of Clergy Reserves, other than such as is made by this Act, or as may be in any way inconsistent with this Act, shall be and so much of the said Act is hereby repealed.

Repeal of certain parts of Imp. Act 3 and 4 V. c. 78.

VII. Any lands which may have been, under the Authority of the Acts hereinbefore cited, or any of them, accepted in exchange for lands originally forming part of the Clergy Reserves in any part of this Province, shall be deemed to be Clergy Reserves for all the purposes of this Act.

Certain lands to be deemed Clergy Reserves.

## CLVII

## SEIGNIORIAL TENURES ACT, 1854

(18 Victoria, c. 3.)

*An Act for the abolition of feudal rights and duties in Lower Canada.*

(Assented to 18th December, 1854.)

Whereas it is expedient to abolish all feudal rights and duties in Lower Canada, whether bearing upon the Censitaire or upon the Seignior, and to secure fair compensation to the latter for every lucrative right which is now legally his, and which he will lose by such abolition; And whereas in consideration of the great adavantages which must result to the Province from the abolition of the said Feudal Rights and duties and the substitution of a free tenure for that under which the property subject thereto hath heretofore been held, it is expedient to aid the Censitaire in the redemption of the said charges, more especially as regards those which while they press most heavily on industry and enterprise, cannot from their very nature be otherwise made immediately redeemable without grievous hardship and injustice in many cases: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, as follows:

Preamble.

I. The Act passed in the eighth year of Her Majesty's Reign, intituled, An Act the better to facilitate optional commutation of the tenure of lands en roture in the Seigniories and Fiefs in Lower Canada, into that of franc-aleu roturier, and the Act passed in the twelfth year of Her Majesty's Reign, and intituled, An Act to amend the Act passed in the eighth year of Her Majesty's Reign, intituled, 'An Act the better to facilitate optional commutation of the tenure of lands en roture in the Seigniories and Fiefs in Lower Canada, into that of

Acts 8 V. c. 42, and 12 V. c. 49,

Repealed as regards Seigniories to which this Act extends.

franc-aleu roturier,' shall be and they are hereby repealed in so far as regards the Seigniories to which this Act applies: but deeds of commutation granted or other things done under them shall remain in full force and have the same effect as if the said Acts had not been repealed.

Determination of the Price to be paid by Seignior and Censitaire for the commutation of the tenure of their Property.

Governor to appoint Commissioners.

II. It shall be lawful for the Governor to appoint Commissioners under this Act, and from time to time to remove them, and to appoint others in the place of any so removed, or dying or resigning office; and each of the said Commissioners shall, before entering upon the duties of his office, take and subscribe, before a Judge of the Superior Court, the following oath:

Their oath of office.

"I, , swear that I will faithfully, and without partiality, fear, favor or affection, perform my duty as Commissioner under the Seigniorial Act of 1854."

Remuneration.

III. The said Commissioners shall receive for their services under this Act, and for their necessary expenses and disbursements, such compensation as shall be allowed to them respectively by the Governor, and no other fees or emoluments whatsoever.

Commissioners to act in the Seigniories assigned to them respectively.

IV. Each of the said Commissioners shall and may act as such in any part of Lower Canada, and they shall be aiding to each other, so that any one of them, if need be, may continue and complete the work begun by any other of them; but subject to this provision the Governor may, from time to time, assign the Seigniory or Seigniories in and for which each of them shall act.

They shall make a Schedule of each Seigniory shewing:

V. It shall be the duty of each of the said Commissioners to value the several rights hereinafter mentioned, with regard to each Seigniory which shall be assigned to him as aforesaid by the Governor, and to draw up in tabular form in triplicate, a Schedule of such Seigniory, shewing:

The total value of the Seigniory:

1. The total value of the Seigniory, that is to say of all the property and lucrative rights which the Seignior holds as such, whether as Seignior dominant of any fief held of him as such Seignior or otherwise, including in such total value, the value of the rights of the Crown;

The value of the rights of the Crown therein;

2. The value of the rights of the Crown in the Seigniory including the value of the droit de quint, and all other valuable rights of the Crown therein as Seignior dominant, or by reason of any reservation in the original grant of the Seigniory, and any difference between the absolute value in franc-aleu roturier of all unconceded lands, waters and water powers in the Seigniory, and appertaining thereto, and the value of the Seignior's rights therein, and they may be ascertained by the decisions of the Judges, under the provisions hereinafter made;

And of those of any other Seignior dominant;

3. The value of the lucrative rights of the Seignior dominant of whom the Seigniory for which the Schedule is made may be held, if the Seigniory be an arrière-fief;

The yearly value of the seigniorial rights on each lot;

4. The yearly value of the Seigniorial rights upon each land, that is to say, each parcel of land originally conceded as a separate lot, or actually owned at the time of making the Schedule by a separate person; entering severally,—the yearly value of the lods et ventes,—the yearly value (if any) of the droit de banalité, and of the exclusive right to build mills in the Seigniory, as distinguished from the right to the water powers, if such rights be recognized by the decision of the Judges who are to enquire of the same as hereinafter provided, but not otherwise,—the yearly value of the cens et rentes and other fixed rights, and of any other legal charges to which the land may be subject; but the droit de retrait shall not be deemed a lucrative right;

The extent of each lot;

5. The extent of such land according to the title of the owner, if produced, and whether it is held for agricultural purposes, or is a mere emplacement or building lot;

How the charges on any lot shall be determined;

And its extent;

6. In determining the Seigniorial charges to which each land is subject, the Commissioner shall be guided by the title of the owner from the Seignior, subject to the decision of the Judges hereinafter mentioned, if such decision shall in any way limit the rights of the Seignior under the said title; and in the absence of the title of the owner, the Commissioner shall determine the extent of the land and the Seigniorial charges to which it is subject by such Books, Plans, procès-verbaux, or other secondary evidence as he may be able to procure;

How each lot shall be described in the Schedule;

7. Each land shall be described in the Schedule by the number, and concession, under which it stands in the land-roll of the Seignior, (or if it bear no such description therein, then by the best brief designation the Commissioner

can assign to it), and the name of the owner as it appears on the land-roll, and in default of information on any of the said points, the Commissioner may describe it in such manner as he may think most convenient, provided he assign to each land a separate and distinct number;

8. The Commissioner shall also include in the Schedule all lands in regard to which the Seigniorial Rights have been commuted, and write opposite thereto the word "Commuted" only. Commuted lands how to be entered.

VI. In order to determine the value of the Seigniorial rights on lands held en roture, the Commissioner shall observe the following rules, namely: General Rules of valuation.

1. The amount of the cens et rentes and annual charges shall be taken as the yearly value thereof; and if any of such rents or charges be payable in grain, fowls or other provisions or fruits of the earth, their average value shall be computed according to the average price of articles of the same kind, taken from the books of the merchants nearest to the place, or ascertained in any other manner the Commissioner shall think most equitable; to establish such average year, the fourteen years immediately preceding the period at which the valuation is made, shall be taken, the two highest and the two lowest shall be struck out, and the average year shall be established on the ten remaining years; the value of personal labour (corvées) shall be estimated in the same manner; Cens et rentes and annual charges. Average Year.

2. In order to establish the yearly value of the casual rights, an average year of their value shall be computed for each of the two classes of lands hereinafter mentioned, upon the ten years immediately preceding the passing of this Act, and the amount of the valuation of the said average year shall be the yearly value of the said casual rights for all the lands in the Seigniory of the same class; and the Commissioners in estimating the yearly value of the lods et ventes in any Seigniory, shall distinguish those accruing on lands held as emplacements or building lots or for other than agricultural purposes, which shall form one class, from those on lands held for agricultural purposes, which shall form another class; and the Commissioner shall apportion the yearly value of the lods et ventes on each class, upon the lands belonging to that class, charging each land with a portion thereof proportionate to its value with regard to lands held as emplacements or building lots, or for other than agricultural purposes, and proportionate to its extent with regard to lands held for agricultural purposes: and any rente expressly charged in any Deed of partial commutation under the Acts hereby repealed, as an indemnity to be paid by the Censitaire instead of lods et ventes, shall be held to represent the value of the right to lods et ventes on the land referred to, and shall be entered and dealt with in all respects accordingly; Casual rights. Value of lods et ventes on agricultural lands and on emplacements to be distinguished. How apportioned. As to rente representing lods et ventes under deed of commutation.

3. In order to establish the yearly value of the droit de banalité and the exclusive right of having mills in the seigniory, (independently of the right to the water power), if any such rights be recognized by the said Judges as aforesaid, the Commissioner shall estimate the probable decrease (if any) in the nett yearly income of the Seignior from his mills, to arise from the loss of such right, and the said sum shall be deemed the yearly value of such right, and shall be apportioned upon the lands subject to the said right in proportion to their extent; Droit de banalité.

4. Any other rights shall be valued according to the revenue or profits which may have accrued therefrom to be ascertained by the Commissioner, in such manner as he shall deem most equitable, and shall be charged upon the lands subject thereto respectively; Other rights.

5. The yearly value of each class of rights upon each land, shall become a rente constituée charged upon the same as the compensation payable to the Seignior thereof, and the total amount of such rentes constituées on any land, after the deduction to be made therefrom as hereinafter provided, shall be payable to the Seignior yearly, at the time and place where the cens et rentes on such land are now payable, unless it be otherwise agreed between the Seignior and the Censitaire, and shall accrue from the day on which notice of the deposit of the Schedule of the Seigniory shall be given in the Canada Gazette, on which day the present cens et rentes and other annual charges upon the land shall cease to accrue; and both they and the rentes constituées under this Act shall accrue rateably for any broken period less than a year, during which they may exist; Yearly value of all rights be converted into a rente constituée, on each land. When payable. As to broken periods.

6. The value of the rights of the Seignior Dominant in any arrière-fief, shall form the capital of a rente constituée payable yearly by the Seignior of the arrière-fief, on the day of the date of the publication in the Canada Gazette of the notice of the deposit of the Schedule of such arrière-fief, and accruing from the Value of the rights of Seignior dominant to be the capital of a rente

constituée payable to him. day of such publication; but out of the moneys coming to the Seignior of the arrière-fief, from the Provincial aid hereinafter mentioned, a sum bearing the same proportion to the whole of such moneys as the value of the rights of the Seignior Dominant in such arrière-fief bears to the value set upon the Seigniorial rights of the Seignior servant in such arrière-fief, shall belong to the Seignior Dominant and his said rente constituée shall be diminished by the amount of the yearly interest at six per cent. per annum, of the sum so coming to him out of the said Provincial aid;

His share in the Fund provided by this Act.

Casual rights of the Crown how valued. 7. And in estimating the value of the casual rights of the Crown in relation to each Seigniory, the Commissioner shall be guided, as nearly as possible, by the same rules as are hereby prescribed for the determination of the yearly value of the casual rights of the Seigniors.

Notice by the Commissioner before commencing his inquiry. VII. Before beginning to prepare the Schedule for any Seigniory, the Commissioner entrusted with that duty, shall give public notice of the place, day and hour, at which he will begin his inquiry; and such notice shall be made by placards and publications in the English and French languages, at the door of every parish Church in such Seigniory, during four consecutive Sundays at the conclusion of divine service in the forenoon, or by placards in both languages, posted during four consecutive weeks, in the most frequented place in any Seigniory in which there shall be no church.

He may enter upon lands for the purposes of the inquiry. VIII. It shall be lawful for the Commissioner to enter upon all lands situate in the Seigniory the Schedule whereof is to be made by him, in order to make such examination thereof as may be necessary, without his being subject in respect thereof to any obstruction or prosecution, and with the right to command the assistance of all Justices, Peace Officers and others, in order to enter and make such examination, in case of opposition.

Powers of the Commissioners obtaining information. IX. The said Commissioners, and each of them separately, shall have full power and authority to examine on oath any person who shall appear before them, or any of them, either as a party interested or as a witness, and to summon before them, or any of them, all persons whom they, or any of them, may deem it expedient to examine upon the matters subject to their consideration, and the facts which they may require to ascertain in order to carry this Act into effect, and to require any such person to bring with him and produce before them, or any of them, any Book, Paper, Plan, Instrument, Document or thing mentioned in such summons, and necessary for the purposes of this Act: And if any person so summoned shall refuse or neglect to appear before them, or before the Commissioner who shall have summoned him, or appearing, shall refuse to answer any lawful question put to him, or to produce any such Book, Paper, Plan, Instrument, Document or thing whatsoever which may be in his possession, and which he shall have been required by such summons to bring with him or to produce, such person shall for every such refusal or neglect incur a penalty of not less than ten nor more than fifty pounds currency, payable to Her Majesty, to be recovered with costs upon summary plaint by such Commissioner before any Judge of the Superior or Circuit Court, and in default of immediate payment shall, by warrant of such Judge, be apprehended and committed to the Common Gaol of the District for a period not exceeding one calendar month.

Punishment of persons refusing to appear before them, or give information.

Value may be estimated by Experts if required by Seigniors or Censitaires. X. Whenever the Commissioner charged with the making of the Schedule of a Seigniory shall be of opinion that the rules prescribed in this Act for determining any value which he is hereby required to determine, do not form an equitable basis for determining the same, or when the Seignior, or not less than twelve Censitaires of the Seigniory, shall call upon the said Commissioner in writing, within a period not exceeding eight days, after the day fixed for the commencement of the inquiry by the Commissioner, requiring that experts be appointed to determine the value of the Seigniorial rights therein, the said Commissioner shall call a public meeting of the Censitaires of the Seigniory, at such place therein, and on such day and at such hour, as shall be specified in the public notice thereof, which he shall give in the manner prescribed by this Act with respect to the commencement of his inquiry, for the purpose of appointing two experts, one of whom shall be appointed by the Seignior and the other shall be elected by the majority of the Censitaires present at such meeting; and in case the Seignior or his agent, shall not be present at the said meeting, or being present, shall refuse or neglect to appoint an expert, the said Commissioner shall appoint one on behalf of the Seignior, and such expert shall have the same powers as he would have had if he had been appointed by the Seignior, and in the event of the Censi-

How such experts shall be appointed.

taires refusing or neglecting to appoint an expert on their behalf, the Commissioner shall in like manner appoint an expert to act for them.

Powers of experts. They shall not be bound by the foregoing rules.

2. The two experts so appointed shall have and exercise the same powers with respect to the valuation of the Seigniorial rights as could be exercised by the Commissioner himself, except that they shall not in any case be bound by the rules aforesaid; and the said two experts shall appoint a third expert, but in case the two experts shall not agree upon the person to be the third expert, then any Judge of the Superior court in the District in which the Seigniory or the greater part thereof lies, shall, on the application of either expert after three clear days' notice to the other, appoint such third expert; and the sums fixed by any two of such experts as the yearly value of the Seigniorial rights respectively, shall be taken by the Commissioner as the value thereof, and shall be apportioned by him in the manner hereinbefore prescribed, upon or among the lands subject to such rights; and the Commissioner shall mention in the Schedule that the value was determined by Expertise.

Third expert.

The value fixed by them to be entered in the Schedule.

Sole expert may be chosen.

Commissioner may be sole or third expert.

3. Provided that when the Seignior and the Censitaires shall agree to appoint and elect, or shall appoint and elect one and the same expert, such sole expert shall have the same powers as the three experts would have had, and his decision shall be final; And provided also, that the Commissioner may be appointed either third expert or sole expert.

Case of experts dying, etc., provided for.

4. In the event of one of the said experts dying, becoming incapacitated, or refusing to act, the appointment or election of another in his stead shall be proceeded with in the manner above prescribed, excepting that it shall not be necessary to call a public meeting of the Censitaires for the appointment of an expert in the stead of the person representing the Seignior; but if the Seignior refuse, or neglect during eight days to appoint another expert, after having been required so to do by the Commissioner, the Commissioner shall appoint an expert on behalf of the said Seignior.

And if the Commissioner be the expert.

5. If the Commissioner be appointed third expert or sole expert, then if he be prevented from acting by any cause, the Commissioner who shall be directed by the Governor to continue the proceedings in the Seigniory shall be third expert or sole expert in the place of the former Commissioner.

Fees of Experts.

Commissioner excepted.

6. The said experts shall be entitled to receive, out of the funds provided by this Act, such fees as the Commissioner shall deem proper to tax, provided that they do not exceed the sum of fifteen shillings for each day of necessary attendance. And the said fees shall be paid by the Receiver General upon the certificate of the Commissioner.

Notice that Schedule is ready for inspection.

XI. The said Commissioner, immediately after the making of the Schedule of a Seigniory, shall give eight days' public notice in the manner prescribed by the seventh Section of this Act, that such Schedule will remain open for the inspection of the Seignior and the Censitaires of the Seigniory during the thirty days following the said notice; and during that time the Commissioner may correct any error and supply any omission which may be pointed out to him by any party interested, or which shall come to his knowledge in any other manner, but he shall not alter any value determined by expertise without the consent of the majority of the experts or of the sole expert;

Inspection and correction of errors.

Who may appear to demand corrections.

2. The proprietor or possessor of the Seigniory may appear either in person or by his agent, before the Commissioner, for the purpose of having any error corrected which may have crept into the said Schedule; and for the like purpose the Censitaires of the Seigniory may appear before the said Commissioner by their agent to be appointed by a majority of the Censitaires of the Seigniory present at a meeting called for that purpose by any three or more of the Censitaires thereof, eight days' public notice thereof having been previously given in the manner prescribed in the seventh Section of this Act;

Schedule not to be completed until Seignior's Rights are decided.

3. But no schedule shall be completed until the Judges of the special Court shall have given judgment upon the Questions to be submitted to them as hereinafter mentioned; and in the event of any of the decisions pronounced by the said Special Court, being reversed or altered upon appeal to the privy Council, the Commissioners forming the Court of Revision of Schedules hereinafter mentioned shall alter and amend the Schedules accordingly;

Four revising Commissioners to be selected.

XII. It shall be lawful for the Governor, by letter under the signature of the Provincial Secretary, to select from the Commissioners so to be appointed, four of their number, of whom any three shall form a Court for the revision of Schedules made under this Act, and in like manner from time to time to remove

Three to sit. them and to appoint others in the place of any so removed, dying, resigning office or being incapacitated to act;

Two may decide. 2. The decision of any two of the Commissioners so selected, whether the others be present or not, on any matter relating to the revision of any Schedule made under this Act, shall be final;

They may require evidence. 3. In making such revision the Commissioners shall proceed summarily, but they may order any evidence to be adduced which they may think requisite to enable them to pronounce a correct decision, and for that purpose shall have the same powers as in making a Schedule;

Not to revise their own Schedule. 4. No Commissioner so selected shall sit in revision of any Schedule made by him;

When and how a revision may be obtained. 5. And no revision of any Schedule shall be allowed unless application be made for the same within fifteen days from the expiration of the time allowed under the Eleventh Section of this Act for the correction thereof by the Commissioner by whom it was made; and every such application shall be made by a Petition presented on behalf of the party interested to the Governor, specifying the objections made to such Schedule and the amendments demanded, and praying for the revision thereof;

How Schedules shall be referred to them for revision. 6. Upon the receipt of any such Petition, the Provincial Secretary shall refer the same to the Commissioners forming the Court of Revision aforesaid, whose duty it shall be, after having given eight days' notice in the manner provided by the seventh Section of this Act, to proceed to revise the Schedule therein mentioned, and if they find any error to correct the same, in so far as, but no farther than, it shall have been so specially objected to; but they shall not alter any value determined by expertise without the consent of the majority of the experts or of the sole expert;

Costs against party wantonly requiring a revision. 7. The said Court of Revision may award and tax costs against any party who may in their opinion have demanded or opposed the revision of the schedule without reasonable cause, and such costs may be recovered on the certificate of any one of the said Commissioners as a debt due by the party against whom they shall have been awarded, to the party in whose favour they have been taxed.

Notice of completion and deposit of Schedule with the Receiver General. XIII. As soon as the Schedule of a Seigniory shall be completed in the manner hereinbefore provided, the Commissioner who shall have made it shall transmit a triplicate thereof to the Receiver General of this Province; he shall deposit another triplicate in the office of the Superior Court in the District in which the Seigniory is situate, or if such Seigniory be situate in two Districts, then in the office of the said Court in that District in which the greater part of such Seigniory is situate; and shall retain the other triplicate in his hands until it shall be otherwise provided by law; and he shall give public notice of his having so deposited the same, in the terms of the form A, annexed to this Act, or in other terms of like import, in the English and French languages in the Canada Gazette, or other newspaper recognized as the Official Gazette of the Province, and in at least one newspaper published in the District in which such Seigniory or the greater part thereof is situate, or if there be no newspaper published in such District, such notice shall be so published in the nearest District wherein one or more newspapers are published. And the Clerk of the Superior Court shall furnish copies of or extracts from such Schedule duly certified in the usual form, to any person applying for the same, and may demand three pence currency for every hundred words or figures in any such copy or extract; and he shall also furnish one copy of every such Schedule on demand to the Seignior of the Seigniory to which it relates, and the costs thereof shall be paid out of the funds provided by this Act; and all such copies and extracts, whether in words or figures, shall be deemed authentic, and shall serve as prima facie proof of all matters therein set forth.

Triplicates how disposed of.

Copies and extracts to be furnished.

Fee therefor.

Their legal effect.

## Abolition of Feudal Rights and Duties.

Upon the publication of the notice of deposit of the Schedule of a Seigniory, all lands therein to be held in franc-aleu. XIV. Upon, from and after the date of the publication in the Canada Gazette, or other official Gazette as aforesaid, of a notice of the deposit of the Schedule of any Seigniory as aforesaid, every Censitaire in such Seigniory shall by virtue thereof hold his land in franc-aleu roturier, free and clear of all Cens, Lods et Ventes, Droit de Banalité, Droit de Retrait and other feudal and Seigniorial duties and charges whatever, except the Rente constituée which will be substituted for all Seigniorial duties and charges; and every Seignior shall thereafter hold his domain and the unconceded lands in his Seigniory, and all water powers and real estate now belonging to him, in franc-aleu roturier, by virtue of this

And the Seignior to be free

Act, and the same and the Rentes constituées payable to him under this Act by his Censitaires, or by any Seignior of whose Fief or Seigniory he is the Seignior Dominant, shall be held and enjoyed by him free and clear of all Quint, Relief or other feudal dues or duties to the Crown or to any Seignior Dominant of whom his Fief or Seigniory is now held; subject always, both as regards Seignior and Censitaire, to the provisions of this Act: Nor shall the Seignior as such after the said time be subject to any onerous obligation towards his Censitaires, or be entitled to any honorary rights, nor shall any land be thereafter granted by any Seignior to be held by any other tenure than franc-aleu roturier, or subject to any mutation fines or other feudal dues; Provided always, that no Seignior shall concede or alienate any part of the unconceded lands in his Seigniory, until after the notice of the deposit of the Schedule thereof has been given as aforesaid, and any such concession or alienation shall be null and void.

from Quint, etc. to the Crown.

No Seigniorial right or duty to remain or be established.

Proviso: Seigniors not to concede before the Schedule is completed.

XV. But no right which any Seignior may have acquired by any legal stipulation entered into before the passing of this Act, by any deed subsequent to the deed of concession, to take any land for the purpose of using the water power adjoining the same and belonging to such Seignior, on paying for such land the full value thereof and of all improvements thereon, shall cease by reason of the passing of this Act, but the same shall remain in full force: Provided always, that the owner of any land adjoining any water power so acquired by the Seignior, and not then used by him, may, at any time after the expiration of one year from the passing of this Act, demand the right to use such water power from the Seignior on paying him the full value of such right, which value, if not agreed upon shall be fixed by Arbitrators, one to be named by the owner of such land, another by the Seignior, and the third by the other two, or if they disagree, then by a Judge of the Superior Court or of the Circuit Court, and the award of any two of them shall be conclusive; and upon payment or tender to the Seignior of the value awarded, the owner of such land shall have the right to use such water power in the manner mentioned in the demand thereof and in the said award.

Certain powers as to taking land for mills, to remain if made after the deed of concession.

Proviso: owner of land adjoining a water power may demand it in certain cases.

Determination of the Legal Rights of the Seignior and Censitaire.

XVI. And in order to avoid as far as may be possible, unnecessary expense, uncertainty and delay in the valuation of the several rights aforesaid, and in the completion of the Schedules of the Seigniories respectively, and all errors as to matters of law on the part of the Commissioners under this Act, Her Majesty's Attorney General for Lower Canada, shall, as soon as may be practicable after the passing of this Act, frame such questions to be submitted for the decision of the Judges of the Court of Queen's Bench and of the Superior Court for Lower Canada, as he shall deem best calculated to decide the points of law, which will, in his opinion, come under the consideration of the said Commissioners, in determining the value of the rights of the Crown, of the Seignior, and of the Censitaires, and he shall file a copy of such Questions in the Office of the said Court of Queen's Bench, and cause a copy thereof to be transmitted by Post to each of the Judges of the said Courts;

Questions to be submitted by the Attorney General to all the Judges for determining Seignior's rights.

To be filed

2. The said Questions shall then be published at least once a week, during six consecutive weeks, in the Canada Gazette, with a notice to all concerned that they have been filed as aforesaid, and are submitted for the decision of the said Judges.

They shall be published.

3. The said Judges shall take the said Questions into consideration, and shall hear the Attorney General, or Solicitor General, and such Counsel as such Attorney General or Solicitor General may deem it advisable to associate with them, at as early a time as may be practicable after the expiration of thirty days from the last publication of the said Questions in the Canada Gazette; and it shall be the duty of the said Judges to give the consideration of the said Questions and the hearing thereof such precedence over other matters before them, and to adopt such other measures with regard to them, as will ensure a decision thereon at as early a period as may be conveniently practicable;

They shall be taken into consideration, and decided as soon as possible.

4. Any Seignior may, at any time before the end of the said period of thirty days after the last publication of the said Questions, or with leave of the said Judges at any time before the hearing thereon, cause an appearance to be filed for him in the Office of the Court of Queen's Bench, in the matter of the said Questions, and having caused such an appearance to be so filed, shall be entitled to be heard by his Counsel upon such Questions, and may submit any supplementary or counter-questions and may append to every such Question, a statement of the Proposition or Propositions he intends to maintain with regard

Seigniors may file counter-questions and propositions.

Number of Counsel limited.

thereto; but no more than five Counsel shall be heard on the part of all the Seigniors so appearing except by special permission of the Court, and if more claim to be heard, the Judges shall decide between them which shall be heard;

And so may Censitaires.

5. The Censitaires of any Seigniory acting by their Agent to be elected in the manner provided by the eleventh Section of this Act, may also in like manner and within a like delay cause an appearance to be filed for them in the Office of the said Court, and having so done shall be entitled to be heard by their Counsel upon the questions filed by the Attorney General as well as upon any questions or propositions filed by any Seignior, and may submit supplementary or counter-questions or propositions filed by any Seignior, and may submit supplementary or counter-questions or propositions to those of the Crown or of any Seignior; but no more than five Counsel shall be heard on the part of all the Censitaires, unless by the special permission of the Court, and if more claim to be heard, the Court shall decide between them which shall be heard;

Number of counsel limited.

Copies of counter-questions, etc., to be furnished to all parties.

6. No publication or service of any such supplementary or counter-questions or propositions shall be necessary, but the same shall be printed, and, when they are filed, at least fifty copies thereof shall be delivered to the Clerk of Appeals, who shall give copies to the Attorney General and to the Advocates appearing for Seigniors or Censitaires;

How the questions shall be heard etc.

7. From the expiration of the said thirty days after the last publication of the said Questions, the matter shall be dealt with by the said Judges, as if an appeal were pending and inscribed and ready for hearing, in which the said Questions had arisen for decision, but no case, or pleadings, or other proceeding than such as are herein prescribed shall be required previously to such hearing; no technical objection of procedure shall be entertained, and if any question arise as to the proceedings in any matter not provided for by this Act, the Judges sitting shall instanter make such order therein as shall seem most equitable and convenient;

Form of decisions.

8. The decision and opinions of the said Judges shall be motivées and delivered as in a judgment on a case in appeal in which all the Questions had arisen and were put in issue, but without any further sentence in favor of the Crown, the Seigniors or the Censitaires, whether as to costs or otherwise;

Effect of decisions.

9. The decision so to be pronounced on each of the said Questions and Propositions shall guide the Commissioners and the Attorney General, and shall in any actual case thereafter to arise, be held to have been a judgment in appeal en dernier ressort on the point raised by such Question, in a like case, though between other parties; Provided always, that it shall be competent to the said Judges to render separate decisions upon any particular question or questions; And provided also, that if, as to any such decision, there be any dissentient Judge, either party may, within one month, by summary petition duly notified to the others, appeal from such decision to Her Majesty in Her Privy Council; but otherwise, there shall be no appeal from any such decision.

Proviso.

Proviso: in what case an appeal shall lie.

Special Session to be held for the purposes of this Act.

10. The Governor may at any time and from time to time, by Proclamation, direct a Special Session of the said Judges to be held at the City of Quebec or at the City of Montreal, and to commence on the day to be named for that purpose in such Proclamation, which shall be issued at least twenty clear days before the commencement of such Special Session; and to any such Special Session all the provisions of the Act constituting the said Court of Queen's Bench, and of the law with regard to the ordinary terms of the said Court (Appeal side) shall apply; except that at every such Special Session, nine of the said Judges shall be a Quorum: and the Questions to be proposed under this Act, and no other business, shall be taken up at such Session; and such Special Session shall continue until no further matter or proceeding relating to this Act shall be before the said Judges, who shall at such Session form a special Court for the purposes of this Act; Provided always, that if for the purpose of holding any term, either of the Court of Queen's Bench or Superior Court, it become necessary to suspend the sittings of such Special Session, the Judges shall adjourn such Special Session to the first convenient day after the close of such term; and the said Special Court may, after hearing all parties on the various matter submitted to them, adjourn for the purpose of rendering judgment only, to any day thereafter, on and after which day they may adjourn for the like purpose; and such adjournments for rendering judgment may be to any day during or between any terms of the said Court of Queen's Bench or Superior Court; And provided also, that it shall be lawful for the Governor, by any proclamation directing such Special Session, to suspend or postpone any Term or Terms of either of the said Courts, or to alter

Quorum.

Duration.

Proviso.

Adjournment for rendering judgment.

Proviso: terms of other Court may be suspended, etc.

the duration thereof; and also to name any Circuit Judge or Judges, or Barrister or Barristers of at least ten years' standing at the Bar of Lower Canada, to be and Act as Assistant Judges of the said Courts, or of either of them, during the pendency of any such Special Session, and of all adjournments thereof, and for such term of time before or after as he may deem necessary; and every person so named shall, for the term of such appointment, have all the powers of a Judge of the Court whereof he shall have been named an Assistant Judge, except the powers given by this Act. The presiding Judge at every such Special Session shall be the Chief Justice of the Court of Queen's Bench if present: if absent, the Chief Justice of the Superior Court, and in the absence of both Chief Justices, the Senior of the Puisne Judges of the Court of Queen's Bench then present.

or Assistant Judges appointed.

Who shall preside at such Special Session.

Provincial appropriation for Relief of Censitaires and Expenses of this Act.

XVII. The emoluments and disbursements of the Commissioners who shall be appointed under this Act, with the expenses to be incurred under the same, shall be paid out of the Consolidated Revenue Fund of this Province, by Warrant of the Governor: and a sum not exceeding in the whole what shall remain of the amount hereinafter limited after deducting therefrom the said emoluments, disbursements and expenses may likewise be paid out of the said Fund for the purposes of this Act: and it shall be lawful for the Governor in Council to cause any sum or sums not exceeding in the whole the sum required for defraying the expenditure authorized by this Act, to be raised by Debentures to be issued on the credit of the said Consolidated Revenue Fund, in such form, bearing such rate of interest, and the principal and interest whereof shall be payable out of the said Fund at such times and places as the Governor in Council shall think most advantageous for the public interest: and the moneys so raised as aforesaid shall make part of the said Consolidated Revenue Fund of this Province: Provided always, that the total amount of moneys to be paid, whether in money or debentures, under this Act, shall not exceed by more than one hundred and fifty thousand pounds, the sum of which the average yearly proceeds of the other sources of Revenue hereinafter mentioned (upon an average of the last five years) would be the yearly interest at six per cent per annum added to the value of the Crown's rights in the Seigniories affected by this Act.

Expenses under this Act how paid.

Fund for other purposes of this Act.

Money may be raised by Debentures.

Proviso: total amount limited.

XVIII. The moneys arising from the following sources of Revenue, shall be and are hereby specially appropriated to make good to the said Consolidated Revenue Fund, the amount which may be taken out of the same for the purpose of paying the sums charged upon it under the next preceding section, that is to say:

Special appropriated money from certain sources.

All moneys arising from the value of the rights of the Crown, from droits de Quint and other dues, in or upon the Seigniories of which the Crown is Seignior Dominant, and which are to be commuted by this Act as such value shall be fixed by the Schedules of the said Seigniories respectively, and all arrears of such dues;

Crown rights in Seigniories.

All moneys arising from the Revenues of the Seigniory of Lauzon, or from the sale of any part of the said Seigniory which may hereafter be sold, and all arrears of such Revenues;

Lauzon.

All moneys arising from Auction Duties and Auctioneers' Licenses in Lower Canada;

Auction Duties.

All moneys arising in Lower Canada from licenses to sell spirituous, vinous or fermented liquors by retail in places other than places of Public Entertainment, commonly called Shop or Store Licenses;

Shop Licenses.

All moneys which shall arise from Tavern Licenses in Lower Canada, after the present charges on that Fund shall have been paid off, except however such portion of that Fund as shall be levied in the Townships.

Tavern Licenses in certain cases.

And separate accounts shall be kept for all moneys arising from the sources of Revenue aforesaid, and of the moneys disbursed under this Act, allowing interest on both sides at the then current rate on Provincial Debentures, to the end that if the sums payable out of the Consolidated Revenue Fund under this Act, shall exceed in the whole the total amount of the sums arising from the sources of Revenue so specially appropriated and any interest allowed thereon as aforesaid, a sum equal to such excess may and the same shall be set apart, to be appropriated by Parliament for some local purpose or purposes in Upper Canada.

Separate accounts to be kept with a view to an appropriation for Upper Canada purposes.

XIX. The Special Fund constituted as aforesaid for the purposes of this Act, shall, after deducting the expenses incurred under this Act, be appropriated in aid of the Censitaires in the several Seigniories, in the following manner:

How the money hereby appropriated shall be applied in aid of the censitaires.

Value of Crown rights in each Seigniory to be given the censitaires therein, in reduction of commutation for lods et rentes.

2. The sum to be established as the value of the rights of the Crown in each Seigniory as aforesaid, and the difference between the absolute value in francaleu roturier of all unconceded lands, waters and water powers in the Seigniories and the value of the Seigniors' rights therein, shall be appropriated in aid of the Censitaires of such Seigniory in reduction of the rentes constituées representing the lods et ventes or other mutation fines therein, by an equal per centage or reduction on each such rente;

Remainder among all the Seigniories in proportion to the charges on each.

3. The remainder of the said Special Fund shall be apportioned by the Receiver General (amongst the several Seigniories to which this Act extends,) giving to each an equal per centage on the total amount of the constituted rents established by the schedule of each such Seigniory, after deducting the value of the Crown's rights therein; And the sum as apportioned to each Seigniory shall be applied by the Receiver General in the following order, which shall be the order of charges thereon:

How the aid shall be applied:

To redemption of commutation money of lods et ventes;

1st. To the redemption of so much of the said rentes constituées representing the lods et ventes or other mutation fines in the Seigniory as may remain after the reduction made by the application of the value of the Crown's rights as aforesaid, by an equal per centage of reduction on such remaining rentes in each case;

Of banality.

2dly. To the redemption of the rentes constituées representing the Banality in the Seigniory, by an equal per centage of reduction on each such rente;

Of cens et rentes exceeding 1*d.* per arpent.

3rly. To the redemption of the rentes constituées representing the cens et rentes and other charges on lands held for Agricultural purposes in the Seigniory, by an equal per centage of reduction on each such rente constituée, exceeding the rate of one penny half penny per annum, per arpent.

Reduction of rente in any case;

4. The reduction of such rentes constituées shall always be in proportion to the capital sum applied to effect such reduction, the reduction being equal to the legal interest of such capital;

Sum apportioned to belong to the Seigniors.

5. The sums so apportioned for each Seigniory shall belong to the Seignior thereof, subject always to the right of the Seignior Dominant, and shall be dealt with in every respect, as moneys paid in redemption of the rentes constituées mentioned in the Schedule of such Seigniory, subject to the special provisions hereinafter made.

Application of Moneys arising from the redemption of Seigniorial Rights, &c.

Oppositions to be filed by persons having claims on Seigniories.

XX. Every proprietor of a Seigniory who shall have within his mouvance another or several fiefs, (unless the value of his rights has been entered in the Schedule thereof), and every person having an hypothecary claim on any Seigniory the Schedule relative to which shall be deposited in the office of the Clerk of the Superior Court in the District in which such Seigniory or part thereof is situate, must, for the preservation of his privileges, within six months from the date of the notice in the Canada Gazette of the deposit of the Schedule of such Seigniory, file an opposition to the distribution of all moneys arising or which may arise from the redemption of the Seigniorial rights in such Seigniory; every such opposition shall be filed in the said office and have effect for thirty years, unless sooner withdrawn, or by Judgment of the Court dismissed; and if any such opposition be renewed within a less time than thirty years, the opposant shall only be entitled to the costs of one single opposition; and while such opposition shall so remain in force, any Censitaire who shall pay the capital or redemption money, of the rente constituée to the Seignior, shall do so at his peril, and on pain of being liable to any such opposant for any loss he may thereby sustain.

Effect and duration of opposition.

What parties must file oppositions to preserve their privileges.

XXI. All minors, interdicted persons and married women, even in the case of dower not yet open (non encore ouvert,) and all who have entailed or contingent rights, by themselves or their tutors, curators, husbands or others, who may act for them, shall be also required, for the preservation of their privileges, to file their opposition to the distribution of all such moneys in the manner provided in the next preceding section: but tutors, curators, husbands, or others who shall have neglected to file such oppositions shall, nevertheless, continue to be responsible towards the persons under their charge or authority for any loss which may result from their negligence in the said behalf.

In default of opposition Seignior may receive his share of the fund, etc.

XXII. If, after the expiration of six months, from the date of the first publication in the Canada Gazette of the Notice by the Receiver General of the Deposit of the Schedule of the Seigniory in which such land is situate, the possessor of such Seigniory produce to the Receiver General a certificate, granted by the Clerk of the Superior Court for the District in which the Schedule relative to such

Seigniory, or a triplicate thereof, is deposited, stating that there is no opposition to the payment of the redemption moneys in such Seigniory, the said Receiver General shall pay to the said Seignior, on his giving a duplicate receipt therefor, the amount of any moneys coming to such Seignior out of the Special Fund hereinbefore mentioned, with interest thereon, at six per cent per annum, to be computed from the date of the said notice, and thereafter the Seignior shall have full right to receive the price of the rentes constituées in his Seigniory directly from the Censitaires, and to deal with such rentes as he shall see fit.

And the capital of the rentes constituées.

XXIII. Whenever the Receiver General shall have ascertained the amount of money coming to any Seignior out of the Special Fund hereby appropriated in aid of the Censitaires, and there shall be an opposition filed as aforesaid to the distribution of such money, the Receiver General shall deposit a certificate of the said amount in the hands of the Clerk of the Superior Court in the District wherein the Schedule relative to the said Seigniory, shall have been deposited; and the said Court shall make the distribution of the said moneys among the opposants, according to the order of their hypothecs, and the preference to their respective privileges; and the Receiver General shall pay the same to the Clerk of the Court to be distributed according to such order, but the interest on any sum coming to a Seignior, and in the Receiver General's hands, shall always be payable to such Seignior.

How money in Receiver General's hands shall be dealt with in case of opposition filed.

XXIV. All persons holding in mortmain, corporations, tutors, curators, and administrators possessing lands held en roture, or persons holding entailed lands the rentes constituées upon which may be redeemed with advantage to those whom they represent, may effect the redemption of any rente constituée under the provisions of this Act by paying the price of redemption out of the moneys of those whom they represent: Provided that tutors, curators and usufructuary proprietors (usufruitiers) and holders of entailed lands, observe the formalities required by law in the alienation of the property of the persons whose rights shall be represented by them; but persons holding in mortmain and corporations shall not be required to observe any other formality in or before the redemption of any such rente constituée than those prescribed by this Act.

Corporations, tutors, etc., empowered to pay off the capital of rentes constituées under this Act.

Proviso.

XXV. And it shall be lawful for the several religious or ecclesiastical communities, holding in mortmain Fiefs or Seigniories in Lower Canada, to invest from time to time, as they shall see fit, in any lands or tenements in this Province, or in any public or private securities in this Province, which they shall deem the most advisable or advantageous to their respective communities, any sums of money that may accrue to them from the redemption of any rente constituée created under this Act, or out of the Special Fund appropriated by this Act.

Religious communities holding Seigniories may invest commutation money in real estate.

Destination and Legal character of Properties and rights Hereafter to Represent Seigniories.

XXVI. In respect of all rights acquired in, to or upon, any Seigniory before the publication in the Canada Gazette of the notice of the Receiver General of the deposit of the Schedule of any Seigniory in his hands, and for the preservation whereof an opposition shall have been filed within six months from the date of the said publication, all lands and real rights which at and immediately before the passing of this Act were held by the Seignior as part of his Seigniory, all rights secured to him under the Schedule thereof, all rentes under this Act to be created, all moneys to arise from the redemption of any such rentes, or to be received by the Seignior out of the aid granted by this Act to the censitaires towards the redemption of Seigniorial rights, duties and dues, and all properties and rights so by such Seignior acquired as to represent such moneys, shall be held and taken as though attached to the domaine of such Seigniory, and as representing such Seigniory; but in respect of all rights thereafter to accrue, or for the preservation whereof no opposition shall have been filed within the delay aforesaid, all such lands, rights, rentes and moneys shall be held and taken to be, and shall be to all intents separate and independent properties and rights; and it shall not be requisite that any person, in order to the holding, recovery or enforcement of any thereof, should qualify himself as being, or as ever having been, a Seignior.

As respects claims existing before the notice of deposit of the Schedule, and for which oppositions shall be filed, the rentes constituées shall be dealt with as the Seigniory.

As regards other rights the said rentes shall be distinct properties.

XXVII. All rentes constituées to be created under this Act, shall have the same privileges ex causa as the right of the bailleur de fonds, and the like preference over all other hypothecary claims affecting the land, as any Seigniorial dues upon or arising out of such land would have had previous to redemption of the said dues, without any registration in any Registry office to that end; but the

Privilege for securing such rentes.

No more than five years' to be recoverable.

Creditor shall not have the right to recover more than five years' arrears of any such rent; and in default of moveables out of which the amount of any judgment for such arrears, though amounting to less than Ten Pounds currency, may be levied, execution may issue against such land after a delay of one year from the date of such Judgment, and not sooner.

In what cases any such rentes shall be redeemable.

XXVIII. Every rente constituée established by virtue of this Act, shall always be redeemable by consent of the owner of the land and of the Seignior, in cases where the Seignior has the right to the capital thereof for his own use, and not otherwise; but if the Seigniory be entailed (substituée) or held by a tutor, curator, or usufructuary proprietor (usufruitier), and an opposition be filed and then in force, the rente and arrears only shall be received, subject always to the exception in the next following section, which shall apply to all cases of redemption of such rentes.

Such rentes shall be redeemable in every case if paid off at once for the whole Seigniory.

XXIX. Provided always, that it shall not be lawful to redeem any such rente constituée except by the consent of the Seignior having the right to the capital thereof for his own use, at any other time in any year than the day on which such rente is payable; But provided also, that at any time, and whether the Seignior have or have not the right to the capital of the rentes constituées under this Act, for his own use, it shall be lawful for the Censitaires in any Seigniory to redeem by one payment all the said rentes constituées then remaining in the Seigniory, and

How the redemption money shall be dealt with.

in such case the redemption money shall be paid to the Seigniory, if there be then no opposition filed as aforesaid and in force; and if there be such opposition, then it shall be paid to the Receiver General, and shall be dealt with in all respects as money coming to the Seignior out of the Special Fund appropriated in aid of the

Money may always be raised for this purpose on the credit of the municipal loan fund.

Censitaires; and the paying of such redemption money shall always be one of the purposes for which money may be raised on the credit of the Consolidated Municipal Loan Fund for Lower Canada, under any law in force for raising money on the credit of such Fund: and the redemption money under this Section shall always be the capital sum of which the rentes redeemed shall be equal to the legal interest, unless another rate be agreed upon by the Censitaires, and a Seignior having the right to such redemption money, for his own use.

*Miscellaneous Provisions*

Décret not to purge Seigniorial rights or any rente constituée representing them.

XXX. No sale under Writ of Execution (par décret) shall have the effect of liberating any immovable property then or theretofore held à titre de cens, and so sold, from any of the rights, charges, conditions or reservations established in respect of such immovable property in favor of the Seignior, due before the completion of the Schedule of the Seigniory in which such property lies, or from any rente constituée payable thereon under such Schedule, but every such immovable property shall be considered as having been sold subject thereafter to all such rights, charges, conditions or reservations, without its being necessary for the Seignior to make an opposition for the said purpose before the sale.

Opposition for such rights or rente to be null.

XXXI. If notwithstanding the provisions of this Act, any opposition afin de charge be made hereafter for the preservation of any of the rights, charges, conditions or reservations mentioned in the next preceding section of this Act, such opposition shall not have the effect of staying the sale, and the opposant shall not be entitled to any costs thereon, but it shall be returned into Court by the Sheriff after the sale, to be dealt with as to law may appertain.

Seignior's privilege for arrears before commutation maintained.

XXXII. The Seignior of whom any land the tenure of which shall be commuted under this Act, was held, shall be maintained, in his privileges and hypothecs on the land, for the payment of all arrears of Seigniorial rights lawfully due at the time of such commutation.

Certain Lands Declared to be and to have been Holden in Franc-aleu Roturier.

Lands heretofore commuted to be held in franc-aleu.

XXXIII. All lands which any Seignior has, by any Act (Acte) or Deed in writing heretofore executed, released or agreed to release from all Seigniorial rights in consideration of the payment of any sum of money or of any annual rent, are hereby declared to be and to have been from the day of the date of every such Act (Acte) or Deed, free from all such Seigniorial rights and holden in franc-aleu

Rentes imposed on them may be redeemed, etc.

roturier; but the Commissioners, for the purpose of making the Schedules of Seigniories in which any such lands are situate, shall deal with all such lands as if they were now held en roture, and when the same are liable to an annual rent, shall establish and specify in the Schedule the capital of every such rent, in order

that the same may be redeemed by the person liable therefor, in the same manner as any rente constituée established by this Act.

Certain lands on which mortmain dues have been paid, to be held in franc-aleu, etc.

XXXIV. All lands upon which mortmain dues (des droits d'indemnité) have been paid to any Seignior, and which have not been sold or conceded since such payment to parties holding otherwise than in mortmain, are hereby declared to be and to have been from the day of the date of such payment or of any Act (Acte) or Deed in writing, binding the owner to pay the same, released from all Seigniorial dues and duties and held en franc-aleu roturier, but subject to the payment of a rente constituée equal to the cens and rent legally due thereon.

## Interpretation and Extent of this Act

Act not to extend to certain Seigniories.

Seigniory of the Seminary of St. Sulpice and certain fiefs held of it.

Crown and Jesuits' Seigniories.

Ordnance Seigniories.

Certain lands in Sherrington.

Act of L. C. 3 Geo. 4, c. 14.

Proviso: Governor may grant equal advantages to censitaires in Crown Seigniories.

XXXV. And, for the interpretation of this Act—Be it enacted, That none of the provisions of this Act shall extend to the wild and unconceded lands in Seignories held by the Crown in trust for the Indians, nor to the Seignories held by the Ecclesiastics of the Seminary of St. Sulpice of Montreal, nor to either of the Fiefs Nazareth, Saint Augustin, Saint Joseph, Closse and Lagauchetière, in the City and County of Montreal, nor to any other arrière-fief depending upon (relevant de) any of the said Seigniories, nor to the Seigniories of the late Order of Jesuits or other Seigniories held by the Principal Officers of Her Majesty's Ordnance, nor to any lands held en franc-aleu noble and granted under and by virtue of the Act of the Parliament of the late Province of Lower Canada, passed in the third year of the Reign of His late Majesty King George the Fourth, and intituled: An Act for the relief of certain censitaires or grantees of La Salle and others therein mentioned, possessing lands within the limits of the Township of Sherrington: Provided always, that the Governor in Council may if he shall see fit, grant to the Censitaires of the Crown Seigniories the Revenues whereof belong to the Province, (including the Seigniories of the late order of Jesuits), upon commutation of their lands, equal advantages and relief as are hereby granted to the Censitaires of Seigniories not excepted from the operation of this Act.

Act not to affect arrears, etc.

XXXVI. Nothing herein contained shall affect the right to, or the recovery of, any arrears of Seigniorial dues accrued before the passing of this Act, or shall give any person whomsoever any right of action for the recovery of money or other value paid by him or his predecessors in the form of rents or other Seigniorial dues, or for the recovery of damages which he may pretend to claim for the privation of any right of which he may deem that he has been illegally deprived by his Seignior, unless he would have had such right of action if this Act had not been passed; nor shall any thing in this Act be construed to weaken or to support any claim of any Seignior or of any Censitaires to any right claimed by or for them respectively, at the hearing on the questions and propositions to be submitted under this Act to the Judges for their decision, but the same shall be decided by the law as it stood immediately before the passing of this Act.

Seignior's rights to be determined as they stood before the passing of this Act.

Interpretation of words: Seigniory;

Seignior;

Seignior and censitaire

Seigniorial rights;

Land.

XXXVII. The word "Seigniory," wherever it occurs in this Act, shall be construed as meaning any part of a Fief, arrière-fief, or Seigniory held by a single individual, or by a corporation, or held by several persons in common (par indivis) as well as the whole of a fief, arrière-fief, or Seigniory, except in such parts of this Act in which the words "arrière-fief" and "Seigniory" are made use of to distinguish the Fief dominant from the fief servant; and the word "Seignior" shall be construed as meaning any Corporation, or any sole proprietor, and all persons who are proprietors in common (par indivis) of any part of a Fief, arrière-fief, or Seigniory, as well as any person or Corporation, being sole proprieter, and all persons, proprietors jointly and par indivis of the whole of any such Fief, arrière-fief, or Seigniory: the words "Seignior" and Censitaire" shall apply to the owner of any rente constituée created under this Act, and the person charged therewith, respectively, as well as to the owner of and person charged with the rights and duties represented by such Rente; the words "Seigniorial Rights," whenever they occur in this Act, shall include and be construed as including all rights, duties, charges, obligations, and Seigniorial or feudal dues whatsoever; the word "Land" shall mean any lot, piece or parcel of land, and shall include the buildings thereon constructed, and all its appurtenances.

Right to amend this Act in furtherance of its intent reserved. Its intent declared.

XXXVIII. The legislature reserves the right of making any provision, declaratory or otherwise which may be found necessary for the purpose of fully carrying out the intent of this Act; which intent is declared to be,—to abolish as soon as practicable, all feudal or Seigniorial rights, duties and dues, substituting therefor rentes constituées of equal value,—to grant to the Seignior a fair

indemnity, and no more, for all the lucrative rights which the law gives him, and which this Act will abolish,—to preserve the rights of third parties, unless such rights be lost by their own neglect or laches:—and to aid the censitaire out of the Provincial Funds in the redemption of those Seigniorial charges which interfere most injuriously with his independence, industry and enterprise; and every enactment and provision of this Act shall receive the most liberal construction possible with a view to ensure the accomplishment of the intention of the legislature, as hereby declared.

Interpretation Act to apply.

XXXIX. The "Interpretation Act" shall apply to this Act.

Short title.

XL. This Act shall be known, cited and referred to as "The Seigniorial Act of 1854".

Extent of Act.

XLI. This Act shall apply to Lower Canada only.

FORM A

Public notice is hereby given that the Schedule (of the fief, arrière-fief, or of the Seigniory of (name of fief, arrière-fief, or Seigniory) shewing the rentes constituées into which the feudal and Seigniorial rights, dues, charges, obligations and rents due and payable upon each land in such (fief, arrière-fief, or Seigniory) are converted, is completed, and that a triplicate thereof has been deposited in the office of the Receiver General, and another in the office of the Superior Court in the District of and that the third remains in the possession of the undersigned,

(Here give the name of the locality in which the Commissioner is sitting, and the date.)

A. B. } Commissioner under the Seigniorial Act of 1854.

## CLVIII

## THE UNION ACT AMENDMENT ACT, 1848

(11 & 12 Victoria, c. 56.)

*An Act to repeal so much of an Act of the Third and Fourth Years of her present Majesty, to re-unite the Provinces of Upper and Lower Canada, as relates to the use of the English Language in Instruments relating to the Legislative Council and Legislative Assembly of the Province of Canada.*

14th August, 1848.

3 and 4 Vict., c. 35.

Whereas by an Act [1] passed in the session of Parliament held in the third and fourth years of Her Present Majesty, intituled "An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada," it is amongst other things enacted that from and after the said reunion of the said two Provinces, all writs, proclamations, instruments for summoning and calling together the Legislative Council and Legislative Assembly of the Province of Canada, and for proroguing and dissolving the same, and all writs of summons and elections, and all writs and public instruments whatsoever relating to the said Legislative Council and Legislative Assembly, or either of them, and all returns to such writs and instruments, and all journals, entries, and written or printed proceedings, of what nature soever, of the said Legislative Council and Legislative Assembly, and of each of them respectively, and all written or printed proceedings and reports of Committees of the said Legislative Council and Legislative Assembly respectively, shall be in the English language only: Provided always that the said enactment shall not be construed to prevent translated copies of any such documents being made, but no such copy should be kept among the records of the Legislative Council or Legislative Assembly, or be deemed in any case to have the force of an original record: And whereas it is expedient to alter the law in this respect, in order that the Legislature of the Province of Canada, or the said Legislative Council and Legislative Assembly respectively, may have power to make such regulations herein as to them may seem advisable: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the

So much of recited Act as enacts that all writs, etc., shall

See No. CXXI.

passing of this Act so much of the said recited Act as is hereinbefore recited shall be repealed.[1] be in English, repealed.

II. And be it enacted that this Act, or any part thereof, may be repealed, altered, or varied at any time during the present session of Parliament. Act may be amended, etc.

## CLIX

## THE UNION ACT AMENDMENT ACT,[2] 1854

(17 & 18 Victoria, c. 118.)

*An Act to empower the Legislature of Canada to alter the Constitution of the Legislative Council for that Province, and for other purposes.*

11th August, 1854.

Whereas an Act[3] of the session of Parliament holden in the third and fourth years of her Majesty, chapter thirty-five, "to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada," provides amongst other things for the establishment of a Legislative Council in the Province of Canada, consisting of members summoned thereto by the Governor, under the authority of her Majesty as therein specified: And whereas it is expedient that the Legislature of the said Province should be empowered to alter the constitution of the said Legislative Council: And whereas the said Act requires amendment in other respects: Be it enacted by the Queen's most excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. It shall be lawful for the Legislature of Canada, by any Act or Acts to be hereinafter for that purpose passed, to alter the manner of composing the Legislative Council of the said Province, and to make it consist of such number of members appointed or to be appointed or elected by such persons and in such manner as to the said Legislature may seem fit, and to fix the qualifications of the persons capable of being so appointed or elected, and by such Act or Acts to make provision, if they shall think fit, for the separate dissolution, by the Governor of the said Legislative Council and Legislative Assembly respectively, and for the purposes aforesaid to vary and repeal in such manner as to them may seem fit all or any of the sections of the said recited Act, and of any other Act of Parliament now in force, which relate to the constitution of the Legislative Council of Canada: Provided always that any bill or bills which shall be passed by the present Legislative Council and Assembly of Canada for all or any of the purposes aforesaid shall be reserved by the said Governor, unless he think fit to withhold her Majesty's assent thereto, for the signification of her Majesty's pleasure, and shall be subject to the enactments of the said recited Act of the third and fourth years of her Majesty, chapter thirty-five, section thirty-nine, which relate to bills so reserved for the signification of her Majesty's pleasure. Power to the Legislature of Canada to alter the Constitution of the Legislative Council.

II. As soon as the constitution of the Legislative Council of the Province of Canada shall have been altered under such Act or Acts so assented to by her Majesty as aforesaid, all provisions of the said recited Act of Parliament of the third and fourth years of her Majesty, chapter thirty-five, and of any other Act of Parliament now in force relating to the Legislative Council of Canada, shall be held to apply to the Legislative Council of Canada so altered, except so far as such provisions may have been varied or repealed by such Act or Acts of the Legislature of Canada so assented to as aforesaid. Provisions of former Acts of Parliament to apply to the new Legislative Council.

[1] This repeal was due to the fact that the speaker of the Canadian house of assembly (1844–5) found himself compelled under the act of union, section 41, to refuse a motion written in French. As a result of this refusal an address was sent to England praying for repeal. Gladstone replied, saying that the address would be favourably received (February 3, 1846), and this act was accordingly passed without protest, except from lord Stanley in the house of lords, who said that the official recognition of French which would follow would constitute 'a permanent barrier between two portions of the country'. Elgin, who favoured the use of French, announced the repeal of section 41 of the act of union to the Canadian parliament on January 18, 1849. (See, *inter alia*, *Journals of the House of Assembly of Canada*; Hansard, vol. c, 3rd. ser.; Bourinot's *Life of Elgin*). This imperial statute did much to allay the fears of the French Canadians, who had not forgotten lord Durham's suggestion that the future should contain a gradual effort 'to establish an English population with English laws and language . . . and to trust government to none but a decidedly English legislature'.

[2] This act was passed in response to an address from the Canadian house of assembly (see *Journals*, 1853; Walrond, *op. cit.*, pp. 145 ff., and Hansard, vol. cxxxiv, 3rd ser.). An act was passed in 1856 by the Canadian legislature providing for an elective legislative council.

[3] No. CXXI.

Legislature of Canada may vary Acts constituting the new Legislative Council;

III. It shall be lawful for the Legislature of Canada from time to time to vary and repeal all or any of the provisions of the Act or Acts altering the constitution of the said Legislative Council: Provided always, that any bill for any such purpose, which shall vary the qualification of councillors, or the duration of office of such councillors, or the power of the Governor to dissolve the Council or Assembly, shall be reserved by the Governor for the signification of her Majesty's pleasure in manner aforesaid.

and may vary, etc., the property qualification of members of Assembly.

IV. It shall be lawful for the Legislature of Canada, by any Act or Acts reserved for the signification of her Majesty's pleasure, and whereto her Majesty shall have assented as hereinbefore provided, to vary or repeal any of the provisions of the recited Act of Parliament of the third and fourth years of her Majesty, which relate to the property qualification of members of the Legislative Assembly.

Proviso in section 26 of 3 and 4 Vict., c. 35, repealed.[1]

V. So much of the twenty-sixth section of the said recited Act of Parliament as provides that it shall not be lawful to present to the Government of the Province of Canada, for her Majesty's assent, any bill of the Legislative Council and Assembly of the said Province by which the number of representatives in the Legislative Assembly may be altered unless the second and third readings of such bill in the Legislative Council and Legislative Assembly shall have been passed with the concurrence of two-thirds of the members for the time being of the said Legislative Council, and two-thirds of the members for the time being of the said Legislative Assembly respectively, and that the assent of her Majesty shall not be given to any such bill unless addresses shall have been presented by the Legislative Council and the Legislative Assembly respectively to the Governor stating that such bill has been so passed, is hereby repealed.

Section 42 of 3 and 4 Vict., c. 35, repealed.

VI. The forty-second section of the said recited Act of Parliament, providing that in certain cases Bills of the Legislative Council and Assembly of Canada shall be laid before both Houses of Parliament of the United Kingdom, is hereby repealed; and notwithstanding anything in the said Act of Parliament, or in any other Act of Parliament contained, it shall be lawful for the Governor to declare that he assents in her Majesty's name to any bill of the Legislature of Canada, or for her Majesty to assent to any such bill if reserved for the signification of her pleasure thereon, although such bill shall not have been laid before the said Houses of Parliament; and no Act heretofore passed, or to be passed by the Legislature of Canada shall be held invalid or ineffectual by reason of the same not having been laid before the said Houses, or by reason of the Legislative Council and Assembly not having presented to the Governor such address as by the said Act of Parliament is required.

Interpretation of terms.

VII. That in this Act the word "Governor" is to be understood as comprehending the Governor and in his absence the Lieutenant-Governor, or person authorized to execute the office or the functions of the Governor of Canada.

## CLX

## THE UNION ACT AMENDMENT ACT, 1856

(22 & 23 Victoria, c. 10.)

*An Act to empower the Legislature of Canada to make laws regulating the appointment of a Speaker of the Legislative Council.*

8th August, 1856.

3 and 4 Vict., c. 35.

Whereas by an Act [2] passed in the Session of Parliament holden in the third and fourth years of Her Majesty, chapter thirty-five, "to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada," it is amongst other things provided that the Governor of the Province of Canada shall have power and authority, from time to time, by an instrument under the Great Seal of the said Province, to appoint one member of the said Legislative Council to be Speaker of the said Legislative Council, and to remove him and appoint another

17 and 18 Vict., c. 118.

in his stead: And, whereas by an Act [3] passed in the Session of Parliament holden in the seventeenth and eighteenth years of Her Majesty, chapter one hundred and eighteen, "to empower the Legislature of Canada to alter the constitution of the Legislative Council for that Province, and for other purposes," power was given

[1] It is difficult to trace the origins of the repeal of this section. Apparently no demand was made for it in Canada (see Keith, *Responsible Government*, ii, p. 645).

[2] No. CXXI. [3] No. CLIX.

to the Legislature of Canada to alter the manner of composing the Legislative Council for that Province, and to make it consist of such number of persons appointed, or to be appointed, or elected by such persons and in such manner as to the said Legislature may seem fit, in the manner and subject to the conditions by that Act provided, and for the purpose aforesaid to vary and repeal, in such manner as to them may seem fit, all or any of the provisions of the first-recited Act, and of any other Act of Parliament now in force which relate to the constitution of the Legislative Council of Canada; and it was thereby further enacted, that the Speaker of the Legislative Council should, as theretofore, be appointed by the Governor: And, whereas the said Legislature, in pursuance of the powers conferred on them by the said last-recited Act, have, by an Act of the Province of Canada passed in the Session of the said Legislature holden in the nineteenth and twentieth years of Her Majesty, "to change the constitution of the Legislative Council by rendering the same elective," provided for the election of members of the said Council, and for the gradual substitution of elective for appointed members thereof: And, whereas doubts have been entertained whether it is lawful for the Legislature of Canada, under the powers given to them by the said last-recited Act of Parliament, to provide for the appointment or election of a Speaker of the Legislative Council, and it is expedient that such doubts should be removed, be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. It shall be lawful for the Legislature of Canada, by any Act or Acts passed in the manner and subject to the conditions specified in the said last-recited Act of Parliament, to alter the constitution of the Legislative Council of the said Province by providing for the appointment or election of a Speaker [1] of the said Council; and for this purpose to vary and repeal, in such manner as to them may seem fit, so much of the hereinbefore recited sections of the said Acts of Parliament, and of the provisions of the said recited or any other Acts of Parliament as relates to the appointment of such Speaker.

## CLXI

## A. T. GALT'S RESOLUTIONS ON FEDERATION, 1858 [2]

[Trans.: Skelton, *Life and Times of A. T. Galt.*]

1. That in view of the rapid development of the population and resources of Western Canada, irreconcilable difficulties present themselves to the maintenance of that equality which formed the basis of the Union of Upper and Lower Canada, and require this House to consider the means whereby the progress which has so happily characterized this province may not be arrested through the occurrence of sectional jealousies and dissensions. It is, therefore, the opinion of this House that the Union of Upper and Lower Canada should be changed from a Legislative to a Federative Union by the subdivision of the province into two or more divisions, each governing itself in local and sectional matters, with a general legislative government for subjects of national and common interest; and that a Commission of nine members be now named to report on the best means and mode of effecting such constitutional changes.

2. That considering the claims possessed by this province on the Northwestern and Hudson's Bay territories and the necessity of making provision for the government of the said districts, it is the opinion of this House that in the adoption of a federative constitution for Canada means should be provided for the local government of the said territories under the general government until population and settlement may from time to time enable them to be admitted into the Canadian Confederation.

3. That a general Confederation of the provinces of New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island with Canada and the Western territories is most desirable and calculated to promote their several and united interests by preserving to each province the uncontrolled management of its peculiar institutions and of those internal affairs respecting which differences of opinion might arise with other members of the Confederation, while it will

[1] In 1860 the Canadian legislature passed an act to provide for the election of a speaker by the legislative council.

[2] For the history of Nos. CLXI–CLXIV, see Skelton, *op. cit.*, chapter viii (Oxford, 1920).

increase that identity of feeling which pervades the possessions of the British Crown in North America; and by the adoption of a uniform policy for the development of the vast and varied resources of these immense territories will greatly add to their national power and consideration; and that a Committee of nine members be appointed to report on the steps to be taken for ascertaining without delay the sentiments of the inhabitants of the Lower Provinces and of the Imperial Government on this most important subject.

## CLXII

## CARTIER, ROSS, AND GALT TO LYTTON

[Trans.: Skelton, *Galt.*]

London, 23rd October, 1858.

Sir,—

We have the honour to submit for the consideration of Her Majesty's Government that the Governor-General of Canada, acting under the advice of his responsible advisers, has been pleased to recommend that the subject of a Federative Union of the Provinces of British North America should form the subject of discussion by Delegates from each Province, to be appointed under the orders of Her Majesty's Government and we have been instructed to urge the importance of this step as well upon grounds peculiar to Canada as from considerations affecting the interests of the other Colonies and of the whole Empire.

It is our duty to state that very grave difficulties now present themselves in conducting the Government of Canada in such a manner as to show due regard to the wishes of its numerous population. The Union of Lower with Upper Canada was based upon perfect equality being preserved between these provinces, a condition the more necessary from the differences in their respective language, law and religion, and although there is now a large English population in Lower Canada, still these differences exist to an extent which prevents any perfect and complete assimilation of the views of the two sections.

At the time of the Union Act Lower Canada possessed a much larger population than Upper Canada, but this produced no difficulty in the Government of the United Provinces under that Act. Since that period, however, the progress of population has been more rapid in the western section, and claims are now made on behalf of its inhabitants for giving them representation in the Legislature in proportion to their numbers, which claims, involving, it is believed, a most serious interference with the principles upon which the Union was based, have been and are strenuously resisted by Lower Canada. The result is shown by an agitation fraught with great danger to the peaceful and harmonious working of our constitutional system, and consequently detrimental to the progress of the province.

The necessity of providing a remedy for a state of things that is yearly becoming worse, and of allaying feelings that are daily being aggravated by the contention of political parties, has impressed the advisers of Her Majesty's representatives in Canada with the importance of seeking for such a mode of dealing with these difficulties as may forever remove them. In this view it has appeared to them advisable to consider how far the Union of Lower with Upper Canada could be rendered essentially federative—in combination with the provinces of New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island, together with such other territories as it may be hereafter desirable to incorporate with such confederation from the possessions of the Crown in British North America.

The undersigned are convinced that Her Majesty's Government will be fully alive to the grave nature of the circumstances referred to which are stated by them under the full responsibility of their position as advisers of the Crown of Canada. They are satisfied that the time has arrived for a constitutional discussion of all means whereby the evils of internal dissension may be avoided in such an important dependency of the Empire, as Canada. But independent of reasons affecting Canada alone it is respectfully represented that the interests of the several Colonies and of the Empire will be greatly promoted by a more intimate and united Government of the entire British North American Possessions. The population, trade and resources of all these Colonies have so rapidly increased of late years and the removal of Trade restrictions has made them, in so great a degree, self-sustaining, that it appears to the Government of Canada

exceedingly important to bind still more closely the ties of their common allegiance to the British Crown, and to obtain for general purposes such an identity in legislation as may serve to consolidate their growing power, thus raising, under the protection of the Empire, an important confederation on the North American Continent.

At present each Colony is totally distinct in its Government, in its customs and trade, and in its general legislation. To each other, no greater facilities are extended than to any Foreign State and the only common tie is that which binds all to the British Crown. This state of things is considered to be neither promotive of the physical prosperity of all, nor of that moral union which ought to be preserved in the presence of the powerful confederation of the United States.

With a population of three and a half millions, with a foreign commerce exceeding Twenty-five million Sterling, and a Commercial Marine inferior in extent only to those of Great Britain and the United States, it is in the power of the Imperial Government, by sanctioning a confederation of these Provinces, to constitute a Dependency of the Empire, valuable in time of peace, and powerful in the event of war—forever removing the fear that these Colonies may ultimately serve to swell the power of another Nation.

In the case of the Australian Colonies the Imperial Government have consented to their discussion of the question of Confederation—although the reasons for it, as relates to the Empire, can scarcely be either so urgent or so important as those which affect British North America.

The Government of Canada do not desire to represent the feelings of the other provinces. Their application is confined to the request that the Imperial Government will be pleased to authorise a meeting of Delegates on behalf of each Colony and of Upper and Lower Canada respectively, for the purpose of considering the subject of a Federative Union, and reporting on the principles on which the same could properly be based.

That such delegates should be appointed by the Executive Government of each Colony, and meet with as little delay as possible.

That the Report of such Delegates should be addressed to the Secretary of State for the Colonies, and that a Copy of it as soon as it is prepared, should be placed in the hands of the Governor and Lieutenant-Governor of each Colony, in order that he may lay the same before the Provincial Parliament, with as little delay as possible.

Upon the Report of such Delegates it will be for Her Majesty's Government to decide whether the interests of the Empire will be promoted by Confederation and to direct the action of the Imperial Parliament thereon—with the concurrence of the Legislatures of the respective Colonies.

We have the honour to be,
Your most obedient and humble servants,
G. E. Cartier.
Jno. Ross.
A. T. Galt.

## CLXIII

## CARTIER, ROSS, AND GALT TO LYTTON

[Trans.: Skelton, *Galt.*]

London, 25th October, 1858.

Dear Sir Edward:

In the official communication which we have this day the honour to address to you, on the Confederation of the British North American provinces, we have felt it improper to offer any opinion upon the details which will form the subject of the proposed discussion by Delegates. It is also our duty not to cause embarrassment by advancing views which may yet have to be greatly modified. We venture, however, in compliance with your desire for a confidential communication on these points to suggest:—

That the Federal Government should be composed of a Governor-General, or Viceroy, to be appointed by the Queen, of an Upper House or Senate elected upon a territorial basis of representation, and of a House of Assembly, elected on the

basis of population, the Executive to be composed of ministers responsible to the legislature.

That the powers of the Federal legislators and Government should comprehend the Customs, Excise and all trade questions, Postal Service, Militia, Banking, Currency, Weights and Measures and Bankruptcy, Public Works of a National Character, Harbours and Light-houses, Fisheries and their protection, Criminal justice, Public Lands, Public Debt and Government of unincorporated and Indian Territories. It will form a subject for mature deliberation whether the powers of the Federal Government should be confined to the points named, or should be extended to all matters not specially entrusted to the local legislatures.

The Confederation might involve the constitution of a Federal Court of Appeal.

The general revenue, having first been charged with the expense of collection and civil government, to be subject to the payment of interest on the public debts of the Confederation to be constituted from the existing obligations of each,—the surplus to be divided each year according to population. The net revenue from the Public Lands in each province to be its exclusive property, except in the case of the territories.

It may be expedient for a limited time to provide from the general revenue a certain fixed contribution for educational and judicial purposes until provision is made for the same by each member of the Confederation.

It will be observed that the basis of Confederation now proposed differs from that of the United States in several important particulars. It does not profess to be derived from the people but would be the constitution provided by the imperial parliament, thus affording the means of remedying any defect, which is now practically impossible under the American constitution. The local legislature would not be in a position to claim the exercise of the same sovereign powers which have frequently been the cause of difference between the American states and their general government. To this may be added that by the proposed distribution of the revenue each province would have a direct pecuniary interest in the preservation of the authority of the Federal Government. In these respects it is conceived that the proposed Confederation would possess greater inherent strength than that of the United States, and would combine the advantage of the unity for general purposes of a legislative union with so much of the Federation principle as would join all the benefits of local government and legislation upon questions of provincial interest.

We have, etc. etc.

(Signed) G. E. Cartier.
Jno. Ross.
A. T. Galt.

## CLXIV

## LYTTON TO HEAD

[Trans.: Skelton, *Galt.*]

Downing Street,
26th November, 1858.

Sir,

I have on a former occasion acknowledged your despatch No. 118 of the 9th of September, accompanied by a minute of a committee of the Executive Council of Canada proposing that Her Majesty's Government should authorize a meeting of Delegates to discuss the expediency and the conditions of a federal Union of the British North American Provinces. By this name I understand to be meant an arrangement for establishing a common legislation in the Provinces upon matters of common concern. I have since received a letter on the same question, dated the 23rd of October, from those members of your Executive Council who have recently visited England, and I have to inform you that the proposal has received from Her Majesty's Government the careful consideration which its importance demands.

The question, however, is one which involves not merely the interest of the important Province of Canada and its relations towards the Empire, but also the position and welfare of the other North American Provinces. The Government of one of them has afforded some indication that it deems the question of a Legislative union of some or all of the Colonies as equally deserving of con-

sideration. With this exception Her Majesty's Government have received no expression whatever of the sentiments which may be entertained by the Governments of the Lower Provinces. We think that we should be wanting in proper consideration for those Governments if we were to authorize, without any previous knowledge of their views, a meeting of Delegates from the Executive Councils, and thus to commit them to a preliminary step towards the settlement of a momentous question, of which they have not yet signified their assent to the principle.

A communication in terms corresponding with the present despatch will be addressed to the Governors of the other Provinces, in order to place them and their responsible Advisers in full possession of the actual state of the question.

I have, etc.,
E. B. Lytton.

## CLXV

## GALT ON THE CANADIAN TARIFF, 1859 [1]

[Trans.: *Parliamentary Papers*, H.C. 400 (1864).]

. . . From the expressions used by his Grace in reference to the sanction of the Provincial Customs Act, it would appear that he had even entertained the suggestion of its disallowance; and though, happily, her Majesty has not been so advised, yet the question having been thus raised, and the consequences of such a step, if ever adopted, being of the most serious character, it becomes the duty of the Provincial Government distinctly to state what they consider to be the position and rights of the Canadian Legislature.

Respect to the Imperial Government must always dictate the desire to satisfy them that the policy of this country is neither hastily nor unwisely formed; and that due regard is had to the interests of the Mother Country as well as of the Province. But the Government of Canada acting for its Legislature and people cannot, through those feelings of deference which they owe to the Imperial authorities, in any manner waive or diminish the right of the people of Canada to decide for themselves both as to the mode and extent to which taxation shall be imposed. The Provincial Ministry are at all times ready to afford explanations in regard to the acts of the Legislature to which they are party; but, subject to their duty and allegiance to her Majesty, their responsibility in all general questions of policy must be to the Provincial Parliament, by whose confidence they administer the affairs of the country; and in the imposition of taxation it is so plainly necessary that the Administration and the people should be in accord, that the former cannot admit responsibility or require approval beyond that of the local Legislature. Self-government would be utterly annihilated if the views of the Imperial Government were to be preferred to those of the people of Canada. It is, therefore, the duty of the present Government distinctly to affirm the right of the Canadian Legislature to adjust the taxation of the people in the way they deem best, even if it should unfortunately happen to meet the disapproval of the Imperial Ministry. Her Majesty cannot be advised to disallow such acts, unless her advisers are prepared to assume the administration of the affairs of the Colony irrespective of the views of its inhabitants.

The Imperial Government are not responsible for the debts and engagements of Canada. They do not maintain its judicial, educational, or civil service; they contribute nothing to the internal government of the country, and the Provincial Legislature acting through a ministry directly responsible to it, has to make provision for all these wants; they must necessarily claim and exercise the widest latitude as to the nature and extent of the burthens to be placed upon the industry of the people. The Provincial Government believes that his Grace must share their own convictions on this important subject: but, as serious evil would have resulted had his Grace taken a different course, it is wiser to prevent future complication by distinctly stating the position that must be maintained by every Canadian Administration.

[1] The vindication of Canada's fiscal autonomy was the outcome of correspondence with the colonial office over a protest presented to the secretary of state by the chamber of commerce at Sheffield in relation to a Canadian act imposing protective duties on British goods. It finally closed remonstrances of such a nature. (Skelton, *op. cit.*, pp. 328 ff.)

These remarks are offered on the general principal of colonial taxation. It is, however, confidently believed, that had his Grace been fully aware of the facts connected with the recent Canada Customs Act, his despatch would not have been written in its present terms of disapproval.

The Canadian Government are not disposed to assume the obligation of defending their policy against such assailants as the Sheffield Chamber of Commerce; . . .

* * * * * *

A. T. GALT
Minister of Finance.

Quebec, 25 October 1859.

## CLXVI

## COLONIAL HABEAS CORPUS ACT, 1862

(25 & 26 Victoria, c. 20.)

*An Act respecting the issue of Writs of Habeas Corpus out of England into Her Majesty's Possessions abroad.*

16th May, 1862.

Whereas it is expedient that writs of Habeas Corpus should not issue out of England into any colony or foreign dominion of the Crown, where Her Majesty has a lawfully established court or courts of justice having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or foreign dominion:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Writ not to issue into Colony, etc., having Court authorized to grant same.

1. No writ of Habeas Corpus shall issue out of England, by authority of any judge or court of justice therein, into any colony or foreign dominion of the Crown, where Her Majesty has a lawfully established court or courts of justice having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or dominion.

Not to affect right of appeal.

2. Provided, that nothing in this Act contained shall affect or interfere with any right of appeal to Her Majesty in Council now by law existing.

## CLXVII

## CANADIAN NEGOTIATIONS FOR FEDERATION,[1] 1864

[Trans.: Pope, *Sir John Macdonald*, i, pp. 344 ff.]

The Government are prepared to state that, immediately after the prorogation, they will address themselves, in the most earnest manner, to the negotiation for a confederation of all the British North American Provinces.

That, failing a successful issue to such negotiations, they are prepared to pledge themselves to legislation during the next session of Parliament for the purpose of remedying existing difficulties by introducing the federal principle for Canada alone, coupled with such provisions as will permit the Maritime Provinces and the North-Western Territory to be hereafter incorporated into the Canadian system.

That for the purpose of carrying on the negotiations and settling the details of the promised legislation, a Royal Commission shall be issued, composed of three members of the Government and three members of the Opposition, of whom Mr. Brown shall be one; and the Government pledge themselves to give all the influence of the Administration to secure to the said commission the means for advancing the great object in view.

That, subject to the House permitting the Government to carry through the public business, no dissolution of Parliament shall take place, but the Administration will again meet the present House.

[1] For the history, see Colquhoun, A. H. U., *The Fathers of Confederation* (Toronto, 1916); Kennedy, W. P. M., *The Constitution of Canada* (Clarendon Press, 1922); Trotter, R. G., *Canadian Federation* (London, 1924).

Shortly after 6 p.m. the parties met at the same place, when Mr. Brown stated that, without communicating the contents of the confidential paper entrusted to him, he had seen a sufficient number of his friends to warrant him in expressing the belief that the bulk of his friends would, as a compromise, accept a measure for the Federative Union of Canada, with provision for the future admission of the Maritime Colonies and the North-West Territory. To this it was replied that the Administration could not consent to waive the larger question; but, after considerable discussion, an amendment to the original proposal was agreed to in the following terms, subject to the approval, on Monday, of the Cabinet and of His Excellency:

The Government are prepared to pledge themselves to bring in a measure next session for the purpose of removing existing difficulties by introducing the federal principle into Canada, coupled with such provisions as will permit the Maritime Provinces and the North-West Territory to be incorporated into the same system of government.

And the Government will seek, by sending representatives to the Lower Provinces and to England, to secure the assent of those interests which are beyond the control of our own legislation to such a measure as may enable all British North America to be united under a General Legislature based upon the federal principle.

## CLXVIII

## THE QUEBEC RESOLUTIONS ON FEDERATION, OCTOBER 10, 1864

[Trans.: *Canada Sessional Papers.*]

*Report of Resolutions adopted at a Conference of Delegates from Provinces of Canada, Nova Scotia, and New Brunswick, and the Colonies of Newfoundland and Prince Edward Island, held at the City of Quebec, October* 10, 1864, *as the Basis of a Proposed Confederation of those Provinces and Colonies.*

1. The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such Union can be effected on principles just to the several Provinces.

2. In the Federation of the British North American Provinces the system of government best adapted under existing circumstances to protect the diversified interests of the several Provinces, and secure efficiency, harmony, and permanency in the working of the Union—would be a General Government charged with matters of common interest to the whole country, and Local Governments for each of the Canadas and for the Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, charged with the control of local matters in their respective sections, provision being made for the admission into the Union on equitable terms of Newfoundland, the North-West Territory, British Columbia, and Vancouver.

3. In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connexion with the Mother-Country, and to the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances will permit.

4. The Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution by the Sovereign personally or by the Representative of the Sovereign duly authorized.

5. The Sovereign or Representative of the Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

6. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

7. For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions—1st, Upper Canada; 2nd, Lower Canada; 3rd, Nova Scotia, New Brunswick, and Prince Edward Island; each division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by 24 members, Lower Canada by 24 members, and the three Maritime Provinces by 24 members, of which Nova Scotia shall have 10, New Brunswick 10, and Prince Edward Island 4 members.

9. The Colony of Newfoundland shall be entitled to enter the proposed Union, with a representation in the Legislative Council of four members.

10. The North-west Territory, British Columbia, and Vancouver shall be admitted into the Union, on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of her Majesty; and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislature of such Province.

11. The Members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life; if any Legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

12. The Members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of 30 years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities, but in the case of Newfoundland and Prince Edward Island the property may be either real or personal.

13. If any question shall arise as to the qualification of a Legislative Councillor, the same shall be determined by the Council.

14. The first selection of the Members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces, so far as a sufficient number be found qualified and willing to serve. Such Members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments; and in such nomination due regard shall be had to the claims of the Members of the Legislative Council of the opposition in each Province, so that all political parties may as nearly as possible be fairly represented.

15. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the Members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

16. Each of the 24 Legislative Councillors representing Lower Canada in the Legislative Council of the General Legislature shall be appointed to represent one of the 24 electoral divisions mentioned in Schedule A. of Chapter 1st of the Consolidated Statutes of Canada, and such Councillor shall reside or possess his qualification in the division he is appointed to represent.

17. The basis of Representation in the House of Commons shall be Population, as determined by the official census every 10 years; and the number of Members at first shall be 194, distributed as follows:

| | |
|---|---|
| Upper Canada | 82 |
| Lower Canada | 65 |
| Nova Scotia | 19 |
| New Brunswick | 15 |
| Newfoundland | 8 |
| And Prince Edward Island | 5 |

18. Until the official census of 1871 has been made up, there shall be no change in the number of Representatives from the several sections.

19. Immediately after the completion of the census of 1871, and immediately after every decennial census thereafter, the representation from each section in the House of Commons shall be readjusted on the basis of population.

20. For the purpose of such readjustments, Lower Canada shall always be assigned 65 Members, and each of the other sections shall at each readjustment receive, for the 10 years then next succeeding, the numbers of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy, according to the census last taken, by having sixty-five members.

21. No reduction shall be made in the number of members returned by any section, unless its population shall have decreased relatively to the population of the whole Union, to the extent of five per centum.

22. In computing at each decennial period the number of Members to which each section is entitled, no fractional parts shall be considered, unless when exceeding one-half the number entitling to a Member, in which case a Member shall be given for each such fractional part.

23. The Legislature of each Province shall divide such Province into the proper number of constituencies, and define the boundaries of each of them.

24. The Local Legislature of each Province may, from time to time, alter the electoral districts for the purposes of representation in the House of Commons, and distribute the Representatives to which the Province is entitled, in any manner such Legislature may think fit.

25. The number of Members may at any time be increased by the General Parliament, regard being had to the proportionate rights then existing.

26. Until provisions are made by the General Parliament, all the laws which at the date of the Proclamation constituting the Union are in force in the Provinces respectively, relating to the qualification of any person to be elected or to sit or vote as a Member of the Assembly in the said Provinces respectively—and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to Returning Officers and their powers and duties,—and relating to the proceedings at elections,—and to the period during which such elections may be continued,—and relating to the trial of Controverted Elections, and the proceedings incident thereto,—and relating to the vacating of seats of Members,—and the issuing and execution of new writs in case of any seat being vacated otherwise than by a dissolution,—shall respectively apply to elections of Members to serve in the House of Commons, for places situate in those Provinces respectively.

27. Every House of Commons shall continue for five years from the day of the return of the writs choosing the same, and no longer, subject, nevertheless, to be sooner prorogued or dissolved by the Governor.

28. There shall be a Session of the General Parliament once at least in every year, so that a period of 12 calendar months shall not intervene between the last sitting of the General Parliament in one session and the first sitting thereof in the next session.

29. The General Parliament shall have power to make Laws for the peace, welfare and good Government of the Federated Provinces (saving the Sovereignty of England, and especially Laws respecting the following subjects:—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The imposition or regulation of Duties of Customs on Imports and Exports, except on Exports of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber, and of Coal and other Minerals.
4. The imposition and regulation of Excise Duties.
5. The raising of money by all or any other modes or systems of Taxation.
6. The borrowing of money on the public credit.
7. Postal service.
8. Lines of Steam or other Ships, Railways, Canals and other works, connecting any two or more of the Provinces together, or extending beyond the limits of any Province.
9. Lines of Steamships between the Federated Provinces and other Countries.
10. Telegraphic communication and the incorporation of Telegraph Companies.
11. All such works as shall, although lying wholly within any Province, be specially declared by the Acts authorizing them to be for the general advantage.
12. The Census.
13. Militia—Military and Naval Service and Defence.
14. Beacons, Buoys and Light Houses.
15. Navigation and Shipping.
16. Quarantine.
17. Sea Coast and Inland Fisheries.
18. Ferries between any Province and a Foreign Country, or between any two Provinces.
19. Currency and Coinage.
20. Banking, incorporation of Banks, and the issue of paper money.
21. Savings Banks.
22. Weights and Measures.
23. Bills of Exchange and Promissory Notes.
24. Interest.
25. Legal Tender.

26. Bankruptcy and Insolvency.
27. Patents of Invention and Discovery.
28. Copyrights.
29. Indians and Lands reserved for the Indians.
30. Naturalization and Aliens.
31. Marriage and Divorce.
32. The Criminal Law, excepting the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal matters.
33. Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the Courts in these Provinces; but any Statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof.
34. The establishment of a General Court of Appeal for the Federated Provinces.
35. Immigration.
36. Agriculture.
37. And generally respecting all matters of a general character, not especially and exclusively reserved for the Local Governments and Legislatures.

30. The General Government and Parliament shall have all powers necessary or proper for performing the obligations of the Federated Provinces, as part of the British Empire, to Foreign Countries, arising under Treaties between Great Britain and such Countries.

31. The General Parliament may also, from time to time, establish additional Courts, and the General Government may appoint Judges and Officers thereof, when the same shall appear necessary or for the public advantage, in order to the due execution of the laws of Parliament.

32. All Courts, Judges, and Officers of the several Provinces shall aid, assist, and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be Courts, Judges and Officers of the General Government.

33. The General Government shall appoint and pay the Judges of the Superior Courts in each Province, and of the County Courts of Upper Canada, and Parliament shall fix their salaries.

34. Until the consolidation of the Laws of Upper Canada, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, the Judges of these Provinces appointed by the General Government shall be selected from their respective Bars.

35. The Judges of the Courts of Lower Canada shall be selected from the Bar of Lower Canada.

36. The Judges of the Court of Admiralty now receiving salaries shall be paid by the General Government.

37. The Judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable only on the Address of both Houses of Parliament.

### Local Government

38. For each of the Provinces there shall be an Executive Officer, styled the Lieutenant-Governor, who shall be appointed by the Governor General in Council, under the Great Seal of the Federated Provinces, during pleasure: such pleasure not to be exercised before the expiration of the first five years, except for cause: such cause to be communicated in writing to the Lieutenant-Governor immediately after the exercise of the pleasure as aforesaid, and also by Messages to both Houses of Parliament, within the first week of the first Session afterwards.

39. The Lieutenant-Governor of each Province shall be paid by the General Government.

40. In undertaking to pay the salaries of the Lieutenant-Governors, the Conference does not desire to prejudice the claim of Prince Edward Island upon the Imperial Government for the amount now paid for the salary of the Lieutenant-Governor thereof.

41. The Local Government and Legislature of each Province shall be constructed in such manner as the existing Legislature of such Province shall provide.

42. The Local Legislatures shall have power to alter or amend their Constitution from time to time.

43. The Local Legislatures shall have power to make Laws respecting the following subjects:

1. Direct Taxation and the imposition of Duties on the Export of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber, and of Coals and other Minerals.
2. Borrowing Money on the credit of the Province.
3. The establishment and tenure of Local Offices, and the appointment and payment of Local Officers.
4. Agriculture.
5. Immigration.
6. Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their Denominational Schools, at the time when the Union goes into operation.
7. The sale and management of Public Lands, excepting Lands belonging to the General Government.
8. Sea Coast and Inland Fisheries.
9. The establishment, maintenance, and management of Penitentiaries, and of Public and Reformatory Prisons.
10. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions.
11. Municipal Institutions.
12. Shop, Saloon, Tavern, Auctioneer and other Licences.
13. Local Works.
14. The Incorporation of private or local Companies, except such as relate to matters assigned to the General Parliament.
15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.
16. Inflicting punishment by fine, penalties, imprisonment or otherwise for the breach of laws passed in relation to any subject within their jurisdiction.
17. The Administration of Justice, including the constitution, maintenance, and organization of the Courts—both of Civil and Criminal Jurisdiction, and including also the Procedure in Civil Matters.
18. And generally all matters of a private or local nature, not assigned to the General Parliament.

44. The power of respiting, reprieving, and pardoning Prisoners convicted of crimes, and of commuting and remitting of sentences in whole or in part, which belongs of right to the Crown, shall be administered by the Lieutenant-Governor of each Province in Council, subject to any instructions he may from time to time receive from the General Government, and subject to any provisions that may be made in this behalf by the General Parliament.

### Miscellaneous

45. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the Local Legislature, and the latter shall be void as far as they are repugnant to or inconsistent with the former.

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

47. No lands or property belonging to the General or Local Government shall be liable to taxation.

48. All bills for appropriating any part of the public revenue, or for imposing any new tax or impost, shall originate in the House of Commons or the House of Assembly, as the case may be.

49. The House of Commons or House of Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost to any purpose, not first recommended by Message of the Governor General, or the Lieutenant-Governor, as the case may be, during the session in which such vote, resolution, address, or bill is passed.

50. Any bill of the General Parliament may be reserved in the usual manner for her Majesty's assent, and any bill of the Local Legislatures may in like manner be reserved for the consideration of the Governor General.

51. Any bill passed by the General Parliament shall be subject to disallowance

by her Majesty within two years, as in the case of bills passed by the Legislatures of the said Provinces hitherto, and in like manner any bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

52. The seat of Government of the Federated Provinces shall be Ottawa, subject to the Royal Prerogative.

53. Subject to any future action of the respective Local Governments, the seat of the Local Government in Upper Canada shall be Toronto; of Lower Canada, Quebec; and the seats of the Local Governments in the other Provinces shall be as at present.

### Property and Liabilities

54. All stocks, cash, bankers' balances and securities for money belonging to each Province, at the time of the Union, except as hereinafter mentioned, shall belong to the General Government.

55. The following public works and property of each Province shall belong to the General Government; to wit:—

1. Canals;
2. Public harbours;
3. Lighthouses and piers;
4. Steamboats, dredges, and public vessels;
5. River and lake improvements;
6. Railway and railway stocks, mortgages, and other debts due by railway companies;
7. Military roads;
8. Custom houses, post offices, and other public buildings, except such as may be set aside by the General Government for the use of the Local Legislatures and Governments;
9. Property transferred by the Imperial Government, and known as Ordnance property;
10. Armouries, drill sheds, military clothing, and munitions of war; and
11. Lands set apart for public purposes.

56. All lands, mines, minerals, and royalties vested in her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, New Brunswick, and Prince Edward Island, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate; subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same.

57. All sums due from purchasers or lessees of such lands, mines, or minerals, at the time of the Union, shall also belong to the Local Governments.

58. All assets connected with such portions of the public debt of any Province as are assumed by the Local Governments, shall also belong to these Governments respectively.

59. The several Provinces shall retain all other public property therein, subject to the right of the General Government to assume any lands or public property required for fortifications or the defence of the country.

60. The General Government shall assume all the debts and liabilities of each Province.

61. The debt of Canada not specially assumed by Upper and Lower Canada respectively, shall not exceed at the time of the Union . . . . . $62,500,000
Nova Scotia shall enter the Union with a debt not exceeding 8,000,000
And New Brunswick, with a debt not exceeding . . 7,000,000

62. In case Nova Scotia or New Brunswick do not incur liabilities beyond those for which their Governments are now bound, and which shall make their debts at the date of Union less than $8,000,000 and $7,000,000 respectively, they shall be entitled to interest at 5 per cent. on the amount not so incurred, in like manner as is hereinafter provided for Newfoundland and Prince Edward Island; the foregoing resolution being in no respect intended to limit the powers given to the respective Governments of those Provinces by legislative authority, but only to limit the maximum amount of charge to be assumed by the General Government. Provided always that the powers so conferred by the respective

Legislatures shall be exercised within five years from this date, or the same shall then lapse.

63. Newfoundland and Prince Edward Island, not having incurred debts equal to those of the other Provinces, shall be entitled to receive by half-yearly payments in advance from the General Government the interest at 5 per cent. on the difference between the actual amount of their respective debts at the time of the Union, and the average amount of indebtedness per head of the population of Canada, Nova Scotia, and New Brunswick.

64. In consideration of the transfer to the General Parliament of the powers of taxation, an annual grant in aid of each Province shall be made, equal to 80 cents per head of the population, as established by the census of 1861, the population of Newfoundland being estimated at 130,000. Such aid shall be in full settlement of all future demands upon the General Government for local purposes, and shall be paid half-yearly in advance to each Province.

65. The position of New Brunswick being such as to entail large immediate charges upon her local revenues, it is agreed that for the period of 10 years from the time when the Union takes effect, an additional allowance of $63,000 per annum shall be made to that Province. But that so long as the liability of that Province remains under $7,000,000, a deduction equal to the interest on such deficiency shall be made from the $63,000.

66. In consideration of the surrender to the General Government by Newfoundland of all its rights in mines and minerals, and of all the ungranted and unoccupied lands of the Crown, it is agreed that the sum of $150,000 shall each year be paid to that Province, by semi-annual payments. Provided that that Colony shall retain the right of opening, constructing, and controlling roads and bridges through any of the said lands, subject to any laws which the General Parliament may pass in respect of the same.

67. All engagements that may, before the Union, be entered into with the Imperial Government for the defence of the country shall be assumed by the General Government.

68. The General Government shall secure, without delay, the completion of the Intercolonial Railway from Rivière-du-Loup through New Brunswick to Truro in Nova Scotia.

69. The communications with the North-western Territory, and the improvements required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit.

70. The sanction of the Imperial and Local Parliaments shall be sought for the Union of the Provinces, on the principles adopted by the Conference.

71. That her Majesty the Queen be solicited to determine the rank and name of the Federated Provinces.

72. The proceedings of the Conference shall be authenticated by the signatures of the Delegates, and submitted by each Delegation to its own Government, and the Chairman is authorized to submit a copy to the Governor General for transmission to the Secretary of State for the Colonies.

I certify that the above is a true copy of the original Report of Resolutions adopted in Conference.

E. P. Taché, Chairman.

## CLXIX

## THE COLONIAL SECRETARY, EDWARD CARDWELL, TO VISCOUNT MONCK

[Trans.: *Canada Sessional Papers.*]

Downing Street,
*December* 3, 1864.

My Lord,

Her Majesty's Government have received with the most cordial satisfaction your Lordship's Despatch of the 7th ultimo, transmitting for their consideration the Resolutions [1] adopted by the Representatives of the several Provinces of British North America, who were assembled at Quebec.

[1] No. CLXVIII.

With the sanction of the Crown—and upon the invitation of the Governor General—men of every Province, chosen by the respective Lieutenant-Governors without distinction of party, assembled to consider questions of the utmost interest to every subject of the Queen, of whatever race or faith, resident in those Provinces; and have arrived at a conclusion destined to exercise a most important influence upon the future welfare of the whole community.

Animated by the warmest sentiments of loyalty and devotion to their Sovereign,—earnestly desirous to secure for their posterity throughout all future time the advantages which they enjoy as subjects of the British Crown,—steadfastly attached to the institutions under which they live,—they have conducted their deliberations with patient sagacity, and have arrived at unanimous conclusions on questions involving many difficulties, and calculated under less favourable auspices to have given rise to many differences of opinion.

Such an event is in the highest degree honourable to those who have taken part in these deliberations. It must inspire confidence in the men by whose judgement and temper this result has been attained:—and will ever remain on record as an evidence of the salutary influence exercised by the institutions under which these qualities have been so signally developed.

Her Majesty's Government have given to your Despatch and to the Resolutions of the Conference their most deliberate consideration. They have regarded them as a whole, and as having been designed by those who have framed them to establish as complete and perfect an union of the whole into one Government, as the circumstances of the case and a due consideration of existing interests would admit. They accept them, therefore, as being, in the deliberate judgement of those best qualified to decide upon the subject, the best framework of a measure to be passed by the Imperial Parliament for attaining that most desirable result.

The point of principal importance to the practical well-working of the scheme, is the accurate determination of the limits between the authority of the Central and that of the Local Legislatures in their relation to each other. It has not been possible to exclude from the resolutions some provisions which appear to be less consistent than might, perhaps, have been desired with the simplicity and unity of the system. But upon the whole it appears to her Majesty's Government that precautions have been taken, which are obviously intended to secure to the Central Government the means of effective action throughout the several Provinces; and to guard against those evils which must inevitably arise, if any doubt were permitted to exist as to the respective limits of Central and Local authority. They are glad to observe that, although large powers of legislation are intended to be vested in local bodies, yet the principle of Central control has been steadily kept in view. The importance of this principle cannot be overrated. Its maintenance is essential to the practical efficiency of the system,—and to its harmonious operation, both in the general administration, and in the Governments of the several Provinces. A very important part of this subject is the expense which may attend the working of the Central and the Local Governments. Her Majesty's Government cannot but express the earnest hope that the arrangements which may be adopted in this respect may not be of such a nature as to increase—at least in any considerable degree—the whole expenditure, or to make any material addition to the taxation, and thereby retard the internal industry, or tend to impose new burdens on the commerce of the country.

Her Majesty's Government are anxious to lose no time in conveying to you their general approval of the proceedings of the Conference. There are, however, two provisions of great importance which seem to require revision. The first of these is the provision contained in the 44th Resolution with respect to the exercise of the Prerogative of pardon. It appears to her Majesty's Government that this duty belongs to the representative of the Sovereign,—and could not with propriety be devolved upon the Lieutenant-Governors, who will, under the present scheme, be appointed not directly by the Crown, but by the Central Government of the United Provinces.

The second point which her Majesty's Government desire should be reconsidered is the Constitution of the Legislative Council. They appreciate the considerations which have influenced the Conference in determining the mode in which this body, so important to the constitution of the Legislature, should be composed. But it appears to them to require further consideration whether if the Members be appointed for life, and their number be fixed, there will be any

sufficient means of restoring harmony between the Legislative Council and the Popular Assembly, if it shall ever unfortunately happen that a decided difference of opinion shall arise between them.

These two points, relating to the Prerogative of the Crown and to the Constitution of the Upper Chamber, have appeared to require distinct and separate notice. Questions of minor consequence and matters of detailed arrangement may properly be reserved for a future time, when the Provisions of the Bill, intended to be submitted to the Imperial Parliament, shall come under consideration. Her Majesty's Government anticipate no serious difficulty in this part of the case,—since the Resolutions will generally be found sufficiently explicit to guide those who will be intrusted with the preparation of the Bill. It appears to them, therefore, that you should now take immediate measures in concert with the Lieutenant-Governors of the several Provinces, for submitting to their respective Legislatures this project of the Conference;—and if, as I hope, you are able to report that these Legislatures sanction and adopt the scheme, her Majesty's Government will render you all the assistance in their power for carrying it into effect. It will probably be found to be the most convenient course, that in concert with the Lieutenant-Governors, you should select a deputation of the persons best qualified, to proceed to this country;—that they may be present during the preparation of the Bill, and give to her Majesty's Government the benefit of their counsel upon any question which may arise during the passage of the measure through the two Houses of Parliament,

I have, &c.,

EDWARD CARDWELL.

## CLXX

## COLONIAL LAWS VALIDITY ACT, 1865

(28 & 29 Victoria, c. 63.)

*An Act to remove Doubts as to the Validity of Colonial Laws.*

29th June, 1865.

Whereas doubts have been entertained respecting the validity of divers laws enacted, or purporting to be enacted by the Legislatures of certain of Her Majesty's Colonies, and respecting the powers of such Legislatures; and it is expedient that such doubts should be removed:

Be it hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The term "colony" shall in this Act include all of Her Majesty's Possessions abroad, in which there shall exist a legislature as hereinafter defined, except the *Channel Islands*, the *Isle of Man*, and such territories as may for the time being be vested in Her Majesty, under or by virtue of any Act of Parliament for the government of *India*: Definitions: "Colony."

The terms "Legislature" and "Colonial Legislature" shall severally signify the authority (other than the Imperial Parliament or Her Majesty in Council), competent to make laws for any colony; "Legislature," "Colonial Legislature."

The term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a legislative body of which one-half are elected by inhabitants of the colony; "Representative Legislature."

The term "Colonial Law" shall include laws made for any colony, either by such Legislature as aforesaid or by Her Majesty in Council; "Colonial Law."

An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament; Act of Parliament, etc., when to extend to Colony

The term "Governor" shall mean the officer lawfully administering the Government of any colony; "Governor."

The term "Letters Patent" shall mean letters patent under the great seal of the United Kingdom of *Great Britain* and *Ireland*. "Letters Patent"

2. Any colonial law, which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act Colonial Law when void for repugnancy.

of Parliament, or having in the colony the force or effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy but not otherwise, be and remain absolutely void and inoperative.

Colonial Law when not void for repugnancy.

3. No colonial law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the law of *England*, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation, as aforesaid.

Colonial Law not void for inconsistency with instructions.

4. No colonial law, passed with the concurrence of or assented to by the Governor of any colony, or to be hereafter so passed or assented to, shall be, or be deemed to have been, void or inoperative by reason only of any instructions with reference to such law, or the subject thereof, which may have been given to such Governor, by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such Governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent, or last-mentioned instrument.

Colonial Legislatures may establish, etc., Courts of Law.

5. Every colonial Legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative Legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such Legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required, by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the colony.

Representative Legislature may alter Constitution.

Certified copies of laws to be evidence that they are properly passed.

6. The certificate of the clerk or other proper officer of a legislative body in any colony to the effect that the document to which it is attached is a true copy of any colonial law assented to by the Governor of such colony, or of any bill reserved for the signification of Her Majesty's pleasure by the said Governor, shall be *primâ facie* evidence that the document so certified is a true copy of such law or bill, and, as the case may be, that such law has been duly and properly passed and assented to, or that such bill has been duly and properly passed and presented to the Governor; and any proclamation, purporting to be published by authority of the Governor, in any newspaper in the colony to which such law or bill shall relate, and signifying Her Majesty's disallowance of any such colonial law, or Her Majesty's assent to any such reserved bill as aforesaid, shall be *primâ facie* evidence of such disallowance or assent.

Proclamation to be evidence of assent and disallowance.

Certain Acts of Legislature of South Australia to be valid.

And whereas doubts are entertained respecting the validity of certain Acts enacted, or reputed to be enacted, by the Legislature of South Australia: be it further enacted as follows:

7. All laws or reputed laws enacted or purporting to have been enacted by the said Legislature, or by persons or bodies of persons for the time being acting as such Legislature, which have received the assent of Her Majesty in Council, or which have received the assent of the Governor of the said Colony in the name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the date of such assent for all purposes whatever; provided that nothing herein contained shall be deemed to give effect to any law or reputed law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful disallowance or repeal of any law.

## CLXXI

## DEBATES IN THE CANADIAN PARLIAMENT ON CONFEDERATION

### 1865

[Trans.: *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec, 1865).]

Monday, *February* 6, 1865.

*Attorney General Macdonald* moved, "That an humble Address be presented to Her Majesty, praying that She may be graciously pleased to cause a measure to be submitted to the Imperial Parliament, for the purpose of uniting the Colonies of Canada, Nova Scotia, New Brunswick, Newfoundland, and Prince Edward

Island, in one Government, with provisions based on certain Resolutions,[1] which were adopted at a Conference of Delegates from the said Colonies, held at the city of Quebec, on the 10th October, 1864." He said:—Mr. Speaker, in fulfilment of the promise made by the Government to Parliament at its last session, I have moved this resolution. I have had the honour of being charged, on behalf of the Government, to submit a scheme for the Confederation of all the British North American Provinces—a scheme which has been received, I am glad to say, with general, if not universal, approbation in Canada. The scheme, as propounded through the press, has received almost no opposition. While there may be occasionally, here and there, expressions of dissent from some of the details, yet the scheme as a whole has met with almost universal approval, and the Government has the greatest satisfaction in presenting it to this House. This subject, which now absorbs the attention of the people of Canada, and of the whole of British North America, is not a new one. For years it has more or less attracted the attention of every statesman and politician in these provinces, and has been looked upon by many far-seeing politicians as being eventually the means of deciding and settling very many of the vexed questions which have retarded the prosperity of the colonies as a whole, and particularly the prosperity of Canada. The subject was pressed upon the public attention by a great many writers and politicians; but I believe the attention of the Legislature was first formally called to it by my honorable friend the Minister of Finance.[2] Some years ago, in an elaborate speech, my hon. friend, while an independent member of Parliament, before being connected with any Government, pressed his views on the Legislature at great length and with his usual force. But the subject was not taken up by any party as a branch of their policy, until the formation of the *Cartier-Macdonald* administration in 1858, when the Confederation of the colonies was announced as one of the measures which they pledged themselves to attempt, if possible, to bring to a satisfactory conclusion. In pursuance of that promise, the letter or despatch, which has been so much and so freely commented upon in the press and in this House, was addressed by three of the members of that Administration to the Colonial Office.[3] The subject, however, though looked upon with favor by the country, and though there were no distinct expressions of opposition to it from any party, did not begin to assume its present proportions until last session. Then, men of all parties and all shades of politics became alarmed at the aspect of affairs. They found that such was the opposition between the two sections of the province, such was the danger of impending anarchy, in consequence of the irreconcilable differences of opinion, with respect to representation by population, between Upper and Lower Canada, that unless some solution of the difficulty was arrived at, we would suffer under a succession of weak governments,—weak in numerical support, weak in force, and weak in power of doing good. All were alarmed at this state of affairs. We had election after election,—we had ministry after ministry,—with the same result. Parties were so equally balanced, that the vote of one member might decide the fate of the Administration, and the course of legislation for a year or a series of years. This condition of things was well calculated to arouse the earnest consideration of every lover of his country, and I am happy to say it had that effect. None were more impressed by this momentous state of affairs, and the grave apprehensions that existed of a state of anarchy destroying our credit, destroying our prosperity, destroying our progress, than were the members of this present House; and the leading statesmen on both sides seemed to have come to the common conclusion, that some step must be taken to relieve the country from the dead-lock and impending anarchy that hung over us. With that view my colleague, the President of the Council,[4] made a motion founded on the despatch addressed to the Colonial Minister, to which I have referred, and a committee was struck, composed of gentlemen of both sides of the House, of all shades of political opinion, without any reference to whether they were supporters of the Administration of the day or belonged to the Opposition, for the purpose of taking into calm and full deliberation the evils which threatened the future of Canada. That motion of my honorable friend resulted most happily. The committee, by a wise provision,—and in order that each member of the committee might have an opportunity of expressing his opinions without being in any way compromised before the public, or with his party, in regard either to his political friends or to

[1] No. CLXVIII.
[2] Hon. A. T. Galt (see Skelton, *Life of Galt*, Oxford, 1920).
[3] Nos. CLXII and CLXIII.
[4] Hon. George Brown (see Lewis, *George Brown*, Oxford, 1926).

his political foes,—agreed that the discussion should be freely entered upon without reference to the political antecedents of any of them, and that they should sit with closed doors, so that they might be able to approach the subject frankly and in a spirit of compromise. The committee included most of the leading members of the House,—I had the honor myself to be one of the number,—and the result was that there was found an ardent desire—a creditable desire, I must say,—displayed by all the members of the committee to approach the subject honestly, and to attempt to work out some solution which might relieve Canada from the evils under which she laboured. The report of that committee was laid before the House, and then came the political action of the leading men of the two parties in this House, which ended in the formation of the present Government. The principle upon which that Government was formed has been announced, and is known to all. It was formed for the very purpose of carrying out the object which has now received to a certain degree its completion, by the resolutions I have had the honor to place in your hands. As has been stated, it was not without a great deal of difficulty and reluctance that that Government was formed. The gentlemen who compose this Government had for many years been engaged in political hostilities to such an extent that it affected even their social relations. But the crisis was great, the danger was imminent, and the gentlemen who now form the present Administration found it to be their duty to lay aside all personal feelings, to sacrifice in some degree their position, and even to run the risk of having their motives impugned, for the sake of arriving at some conclusion that would be satisfactory to the country in general. The present resolutions were the result. And, as I said before, I am proud to believe that the country has sanctioned, as I trust that the representatives of the people in this House will sanction, the scheme which is now submitted for the future government of British North America. Everything seemed to favour the project, and everything seemed to shew that the present was the time, if ever, when this great union between all Her Majesty's subjects dwelling in British North America, should be carried out. When the Government was formed, it was felt that the difficulties in the way of effecting a union between all the British North American Colonies were great—so great as almost, in the opinion of many, to make it hopeless. And with that view it was the policy of the Government, if they could not succeed in procuring a union between all the British North American Colonies, to attempt to free the country from the dead-lock in which we were placed in Upper and Lower Canada, in consequence of the difference of opinion between the two sections, by having a severance to a certain extent of the present union between the two provinces of Upper and Lower Canada, and the substitution of a Federal Union between them. Most of us, however, I may say, all of us, were agreed—and I believe every thinking man will agree—as to the expediency of effecting a union between all the provinces, and the superiority of such a design, if it were only practicable, over the smaller scheme of having a Federal union between Upper and Lower Canada alone. By a happy concurrence of events, the time came when that proposition could be made with a hope of success. By a fortunate coincidence the desire for union existed in the Lower Provinces, and a feeling of the necessity of strengthening themselves by collecting together the scattered colonies on the sea-board, had induced them to form a convention of their own for the purpose of effecting a union of the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, the legislatures of those colonies having formally authorized their respective governments to send a delegation to Prince Edward Island for the purpose of attempting to form a union of some kind. Whether the union should be federal or legislative was not then indicated, but a union of some kind was sought for the purpose of making of themselves one people instead of three. We, ascertaining that they were about to take such a step, and knowing that if we allowed the occasion to pass, if they did indeed break up all their present political organizations and form a new one, it could not be expected that they would again readily destroy the new organization which they had formed,—the union of the three provinces on the sea-board,—and form another with Canada. Knowing this, we availed ourselves of the opportunity, and asked if they would receive a deputation from Canada, who would go to meet them at Charlottetown, for the purpose of laying before them the advantages of a larger and more extensive union, by the junction of all the provinces in one great government under our common Sovereign. They at once kindly consented to receive and hear us. They did receive us cordially and generously, and asked us to lay our views before

them. We did so at some length, and so satisfactory to them were the reasons we gave; so clearly, in their opinion, did we shew the advantages of the greater union over the lesser, that they at once set aside their own project, and joined heart and hand with us in entering into the larger scheme, and trying to form as far as they and we could, a great nation and a strong government. Encouraged by this arrangement, which, however, was altogether unofficial and unauthorized, we returned to Quebec, and then the Government of Canada invited the several governments of the sister colonies to send a deputation here from each of them for the purpose of considering the question, with something like authority from their respective governments. The result was, that when we met here on the 10th of October, on the first day on which we assembled, after the full and free discussions which had taken place at Charlottetown, the first resolution now before this House was passed unanimously, being received with acclamation as, in the opinion of every one who heard it, a proposition which ought to receive, and would receive, the sanction of each government and each people. The resolution is, "That the best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such union can be effected on principles just to the several provinces." It seemed to all the statesmen assembled—and there are great statesmen in the Lower Provinces, men who would do honour to any government and to any legislature of any free country enjoying representative institutions—it was clear to them all that the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain. And it seems to me, as to them, and I think it will so appear to the people of this country, that, if we wish to be a great people; if we wish to form—using the expression which was sneered at the other evening—a great nationality, commanding the respect of the world, able to hold our own against all opponents, and to defend those institutions we prize: if we wish to have one system of government, and to establish a commercial union, with unrestricted free trade, between people of the five provinces, belonging, as they do, to the same nation, obeying the same Sovereign, owning the same allegiance, and being, for the most part of the same blood and lineage: if we wish to be able to afford to each other the means of mutual defence and support against aggression and attack—this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces. The very mention of the scheme is fitted to bring with it its own approbation. Supposing that in the spring of the year 1865, half a million people were coming from the United Kingdom to make Canada their home, although they brought only their strong arms and willing hearts; though they brought neither skill nor experience nor wealth, would we not receive them with open arms, and hail their presence in Canada as an important addition to our strength? But when, by the proposed union, we not only get nearly a million of people to join us—when they contribute not only their numbers, their physical strength, and their desire to benefit their position, but when we know that they consist of old-established communities, having a large amount of realized wealth,—composed of people possessed of skill, education and experience in the ways of the New World—people who are as much Canadians, I may say, as we are—people who are imbued with the same feelings of loyalty to the Queen, and the same desire for the continuance of the connection with the Mother Country as we are, and at the same time, have a like feeling of ardent attachment for this, our common country, for which they and we would alike fight and shed our blood, if necessary. When all this is considered, argument is needless to prove the advantage of such a union. There were only three modes,—if I may return for a moment to the difficulties with which Canada was surrounded,—only three modes that were at all suggested, by which the dead-lock in our affairs, the anarchy we dreaded, and the evils which retarded our prosperity, could be met or averted. One was the dissolution of the union between Upper and Lower Canada, leaving them as they were before the union of 1841. I believe that that proposition, by itself had no supporters. It was felt by every one that, although it was a course that would do away with the sectional difficulties which existed,—though it would remove the pressure on the part of the people of Upper Canada for the representation based upon population,—and the jealousy of the people of Lower Canada lest their institutions should be attacked and prejudiced by that principle in our representation; yet it was felt, by every thinking man in the province that it would be a retrograde step, which would throw back the country to nearly the

same position as it occupied before the union,—that it would lower the credit enjoyed by United Canada,—that it would be the breaking up of the connection which had existed for nearly a quarter of a century, and, under which, although it had not been completely successful, and had not allayed altogether the local jealousies that had their root in circumstances which arose before the union, our province, as a whole, had nevertheless prospered and increased. It was felt that a dissolution of the union would have destroyed all the credit that we had gained by being a united province, and would have left us two weak and ineffective governments, instead of one powerful and united people. The next mode suggested, was the granting of representation by population. Now, we all know the manner in which that question was and is regarded by Lower Canada; that while in Upper Canada the desire and cry for it was daily augmenting, the resistance to it in Lower Canada was proportionably increasing in strength. Still, if some such means of relieving us from the sectional jealousies which existed between the two Canadas, if some such solution of the difficulties as Confederation had not been found, the representation by population must eventually have been carried; no matter though it might have been felt in Lower Canada, as being a breach of the Treaty of Union, no matter how much it might have been felt by the Lower Canadians that it would sacrifice their local interests, it is certain that in the progress of events representation by population would have been carried; and, had it been carried—I speak here my own individual sentiments—I do not think it would have been for the interest of Upper Canada. For though Upper Canada would have felt that it had received what it claimed as a right, and had suceeded in establishing its right, yet it would have left the Lower Province with a sullen feeling of injury and injustice. The Lower Canadians would not have worked cheerfully under such a change of system, but would have ceased to be what they are now—a nationality, with representatives in Parliament, governed by general principles, and dividing according to their political opinions—and would have been in great danger of becoming a faction, forgetful of national obligations, and only actuated by a desire to defend their own sectional interests, their own laws, and their own institutions. The third and only means of solution for our difficulties was the junction of the provinces either in a Federal or a Legislative Union. Now, as regards the comparative advantages of a Legislative and a Federal Union, I have never hesitated to state my own opinions. I have again and again stated in the House, that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the Conference, and discussing the matter as we did, most unreservedly, and with a desire to arrive at a satisfactory conclusion, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority,—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression—would not be received with favour by her people. We found too, that though their people speak the same language and enjoy the same system of law as the people of Upper Canada, a system founded on the common law of England, there was as great a disinclination on the part of the various Maritime Provinces to lose their individuality, as separate political organizations, as we observed in the case of Lower Canada herself. Therefore, we were forced to the conclusion that we must either abandon the idea of Union altogether, or devise a system of union in which the separate provincial organizations would be in some degree preserved. So that those who were, like myself, in favour of a Legislative Union, were obliged to modify their views and accept the project of a Federal Union as the only scheme practicable, even for the Maritime Provinces. Because, although the law of those provinces is founded on the common law of England, yet every one of them has a large amount of law of its own—colonial law framed by itself, and affecting every relation of life, such as the laws of property, municipal and assessment laws; laws relating to the liberty of the subject, and to all the great interests contemplated in legislation; we found, in short, that the statutory law of the different provinces was so varied

and diversified that it was almost impossible to weld them into a Legislative Union at once. Why, sir, if you only consider the innumerable subjects of legislation peculiar to new countries, and that every one of those five colonies had particular laws of its own, to which its people have been accustomed and are attached, you will see the difficulty of effecting and working a Legislative Union, and bringing about an assimilation of the local as well as general laws of the whole of the provinces. We in Upper Canada understand from the nature and operation of our peculiar municipal law, of which we know the value, the difficulty of framing a general system of legislation on local matters which would meet the wishes and fulfil the requirements of the several provinces. Even the laws considered the least important, respecting private rights in timber, roads, fencing, and innumerable other matters, small in themselves, but in the aggregate of great interest to the agricultural class, who form the great body of the people, are regarded as of great value by the portion of the community affected by them. And when we consider that every one of the colonies has a body of law of this kind, and that it will take years before those laws can be assimilated, it was felt that at first, at all events, any united legislation would be almost impossible. I am happy to state—and indeed it appears on the face of the resolutions themselves—that as regards the Lower Provinces, a great desire was evinced for the final assimilation of our laws. One of the resolutions provides that an attempt shall be made to assimilate the laws of the Maritime Provinces and those of Upper Canada, for the purpose of eventually establishing one body of statutory law, founded on the common law of England, the parent of the laws of all those provinces. One great objection made to a Federal Union was the expense of an increased number of legislatures. I will not enter at any length into that subject, because my honorable friends, the Finance Minister and the President of the Council, who are infinitely more competent than myself to deal with matters of this kind—matters of account—will, I think, be able to show that the expenses under a Federal Union will not be greater than those under the existing system of separate governments and legislatures. Here, where we have a joint legislature for Upper and Lower Canada, which deals not only with subjects of a general interest common to all Canada, but with all matters of private right and of sectional interest, and with that class of measures known as "private bills," we find that one of the greatest sources of expense to the country is the cost of legislation. We find, from the admixture of subjects of a general, with those of a private character in legislation, that they mutually interfere with each other; whereas, if the attention of the Legislature was confined to measures of one kind or the other alone, the session of Parliament would not be so protracted and therefore not so expensive as at present. In the proposed Constitution all matters of general interest are to be dealt with by the General Legislature; while the local legislatures will deal with matters of local interest, which do not affect the Confederation as a whole, but are of the greatest importance to their particular sections. By such a division of labour the sittings of the General Legislature would not be so protracted as even those of Canada alone. And so with the local legislatures, their attention being confined to subjects pertaining to their own sections, their sessions would be shorter and less expensive. Then, when we consider the enormous saving that will be effected in the administration of affairs by one General Government—when we reflect that each of the five colonies has a government of its own with a complete establishment of public departments and all the machinery required for the transaction of the business of the country—that each has a separate executive, judicial and militia system—that each province has a separate ministry, including a Minister of Militia, with a complete Adjutant General's Department—that each has a Finance Minister with a full Customs and Excise staff—that each Colony has as large and complete an administrative organization, with as many Executive officers as the General Government will have—we can well understand the enormous saving that will result from a union of all the colonies, from their having but one head and one central system. We in Canada already know something of the advantages and disadvantages of a Federal Union. Although we have nominally a Legislative Union in Canada—although we sit in one Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know, as a matter of fact, that since the union in 1841, we have had a Federal Union; that in matters affecting Upper Canada solely, members from that section claimed and generally exercised the right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own

section. We have had a Federal Union in fact, though a Legislative Union in name; and in the hot contests of late years, if on any occasion a measure affecting any one section were interfered with by the members from the other—if, for instance, a measure locally affecting Upper Canada were carried or defeated against the wishes of its majority, by one from Lower Canada,—my honourable friend the President of the Council, and his friends denounced with all their energy and ability such legislation as an infringement of the rights of the Upper Province. Just in the same way, if any act concerning Lower Canada were pressed into law against the wishes of the majority of her representatives, by those from Upper Canada, the Lower Canadians would rise as one man and protest against such a violation of their peculiar rights. The relations between England and Scotland are very similar to that which obtains between the Canadas. The union between them, in matters of legislation, is of a federal character, because the Act of Union between the two countries provides that the Scottish law cannot be altered, except for the manifest advantage of the people of Scotland. This stipulation has been held to be so obligatory on the Legislature of Great Britain that no measure affecting the law of Scotland is passed unless it receives the sanction of a majority of the Scottish members in Parliament. No matter how important it may be for the interests of the empire as a whole to alter the laws of Scotland—no matter how much it may interfere with the symmetry of the general law of the United Kingdom, that law is not altered, except with the consent of the Scottish people, as expressed by their representatives in Parliament. Thus, we have in Great Britain, to a limited extent, an example of the working and effects of a Federal Union, as we might expect to witness them in our own Confederation. The whole scheme of Confederation, as propounded by the Conference, as agreed to and sanctioned by the Canadian Government, and as now presented for the consideration of the people, and the Legislature, bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession. When we think of the representatives of five colonies, all supposed to have different interests, meeting together, charged with the duty of protecting those interests and of pressing the views of their own localities and sections, it must be admitted that had we not met in a spirit of conciliation, and with an anxious desire to promote this union; if we had not been impressed with the idea contained in the words of the resolution—"That the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain,"—all our efforts might have proved to be of no avail. If we had not felt that, after coming to this conclusion, we were bound to set aside our private opinions on matters of detail, if we had not felt ourselves bound to look at what was practicable, not obstinately rejecting the opinions of others nor adhering to our own; if we had not met, I say, in a spirit of conciliation, and with an anxious, overruling desire to form one people under one government, we never would have succeeded. With these views, we press the question on this House and the country. I say to this House, if you do not believe that the union of the colonies is for the advantage of the country, that the joining of these five peoples into one nation, under one sovereign, is for the benefit of all, then reject the scheme. Reject it if you do not believe it to be for the present advantage and future prosperity of yourselves and your children. But if, after a calm and full consideration of this scheme, it is believed, as a whole, to be for the advantage of this province—if the House and country believe this union to be one which will ensure for us British laws, British connection, and British freedom—and increase and develop the social, political and material prosperity of the country, then I implore this House and the country to lay aside all prejudices, and accept the scheme which we offer. I ask this House to meet the question in the same spirit in which the delegates met it. I ask each member of this House to lay aside his own opinions as to particular details, and to accept the scheme as a whole if he thinks it beneficial as a whole. As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty. By a happy coincidence of circumstances, just when an Administration had been formed in Canada for the purpose of attempting a solution of the difficulties under which we laboured, at the same time the Lower Provinces, actuated by a similar feeling, appointed a Conference with a view to a union among themselves, without being cognizant of the position the government was taking in Canada. If it had not been for this fortunate coincidence of events, never, perhaps, for a long series of years would we have been able to bring this scheme to a practical conclusion.

But we did succeed. We made the arrangement, agreed upon the scheme, and the deputations from the several governments represented at the Conference went back pledged to lay it before their governments, and to ask the legislatures and people of their respective provinces to assent to it. I trust the scheme will be assented to as a whole. I am sure this House will not seek to alter it in its unimportant details; and, if altered in any important provisions, the result must be that the whole will be set aside, and we must begin *de novo*. If any important changes are made, every one of the colonies will feel itself absolved from the implied obligation to deal with it as a Treaty, each province will feel itself at liberty to amend it *ad libitum* so as to suit its own views and interests; in fact, the whole of our labours will have been for nought, and we will have to renew our negotiations with all the colonies for the purpose of establishing some new scheme. I hope the House will not adopt any such a course as will postpone, perhaps for ever, or at all events for a long period, all chances of union. All the statesmen and public men who have written or spoken on the subject admit the advantages of a union, if it were practicable: and now when it is proved to be practicable, if we do not embrace this opportunity the present favourable time will pass away, and we may never have it again. Because, just so surely as this scheme is defeated, will be revived the original proposition for a union of the Maritime Provinces, irrespective of Canada; they will not remain as they are now, powerless, scattered, helpless communities; they will form themselves into a power, which, though not so strong as if united with Canada, will, nevertheless, be a powerful and considerable community, and it will be then too late for us to attempt to strengthen ourselves by this scheme, which, in the words of the resolution "is for the best interests, and present and future prosperity of British North America." If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States. I am no alarmist. I do not believe in the prospect of immediate war. I believe that the common sense of the two nations will prevent a war; still we cannot trust to probabilities. The Government and Legislature would be wanting in their duty to the people if they ran any risk. We know that the United States at this moment are engaged in a war of enormous dimensions—that the occasion of a war with Great Britain has again and again arisen, and may at any time in the future again arise. We cannot foresee what may be the result; we cannot say but that the two nations may drift into a war as other nations have done before. It would then be too late when war had commenced to think of measures for strengthening ourselves, or to begin negotiations for a union with the sister provinces. At this moment, in consequence of the ill-feeling which has arisen between England and the United States—a feeling of which Canada was not the cause—in consequence of the irritation which now exists, owing to the unhappy state of affairs on this continent, the Reciprocity Treaty, it seems probable, is about to be brought to an end—our trade is hampered by the passport system, and at any moment we may be deprived of permission to carry our goods through United States channels—the bonded goods system may be done away with, and the winter trade through the United States put an end to. Our merchants may be obliged to return to the old system of bringing in during the summer months the supplies for the whole year. Ourselves already threatened, our trade interrupted, our intercourse, political and commercial, destroyed, if we do not take warning now when we have the opportunity, and while one avenue is threatened to be closed, open another by taking advantage of the present arrangement and the desire of the Lower Provinces to draw closer the alliance between us, we may suffer commercial and political disadvantages it may take long for us to overcome. The Conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union, while at the same time it preserved that liberty of action for the different sections which is allowed by a Federal Union. And I am strong in the belief—that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectiona freedom of a federal union, with protection to local interests. In doing so we had the advantage of the experience of the United States. It is the fashion now to enlarge on the defects of the Constitution of the United States, but I am not one of those who look upon it as a failure. I think and believe that it is one of the

most skilful works which human intelligence ever created; is one of the most perfect organizations that ever governed a free people. To say that it has some defects is but to say that it is not the work of Omniscience, but of human intellects. We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now. It was in the main formed on the model of the Constitution of Great Britain, adapted to the circumstances of a new country, and was perhaps the only practicable system that could have been adopted under the circumstances existing at the time of its formation. We can now take advantage of the experience of the last seventy-eight years, during which that Constitution has existed, and I am strongly of the belief that we have, in a great measure, avoided in this system which we propose for the adoption of the people of Canada, the defects which time and events have shown to exist in the American Constitution. In the first place, by a resolution which meets with the universal approval of the people of this country, we have provided that for all time to come, so far as we can legislate for the future, we shall have as the head of the executive power, the Sovereign of Great Britain. No one can look into futurity and say what will be the destiny of this country. Changes come over nations and peoples in the course of ages. But, so far as we can legislate, we provide that, for all time to come, the Sovereign of Great Britain shall be the Sovereign of British North America. By adhering to the monarchical principle, we avoid one defect inherent in the Constitution of the United States. By the election of the President by a majority for a short period, he never is the sovereign and chief of the nation. He is never looked up to by the whole people as the head and front of the nation. He is at best but the successful leader of a party. This defect is all the greater on account of the practice of re-election. During his first term of office, he is employed in taking steps to secure his own re-election, and for his party a continuance of power. We avoid this by adhering to the monarchical principle—the Sovereign whom you respect and love. I believe that it is of the utmost importance to have that principle recognized, so that we shall have a Sovereign who is placed above the region of party—to whom all parties look up—who is not elevated by the action of one party nor depressed by the action of another, who is the common head and sovereign of all. In the Constitution we propose to continue the system of Responsible Government, which has existed in this province since 1841, and which has long obtained in the Mother Country. This is a feature of our Constitution as we have it now, and as we shall have it in the Federation, in which, I think, we avoid one of the great defects in the Constitution of the United States. There the President, during his term of office, is in a great measure a despot, a one-man power, with the command of the naval and military forces—with an immense amount of patronage as head of the Executive, and with the veto power as a branch of the legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the Constitution to consult with, unless he chooses to do so. With us the Sovereign, or in this country the Representative of the Sovereign, can act only on the advice of his ministers, those ministers being responsible to the people through Parliament. Prior to the formation of the American Union, as we all know, the different states which entered into it were separate colonies. They had no connection with each other further than that of having a common sovereign, just as with us at present. Their constitutions and their laws were different. They might and did legislate against each other, and when they revolted against the Mother Country they acted as separate sovereignties, and carried on the war by a kind of treaty of alliance against the common enemy. Ever since the union was formed the difficulty of what is called "State Rights" has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their Constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each state, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature. We have thus avoided that great source of weakness which has been

the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority, and if this Constitution is carried out, as it will be in full detail in the Imperial Act to be passed if the colonies adopt the scheme, we will have in fact, as I said before, all the advantages of a legislative union under one administration, with, at the same time the guarantees for local institutions and for local laws, which are insisted upon by so many in the provinces now, I hope, to be united. I think it is well that, in framing our Constitution—although my honourable friend the member for Hochelaga[1] sneered at it the other day, in the discussion on the Address in reply to the speech from the Throne—our first act should have been to recognize the sovereignty of Her Majesty. I believe that, while England has no desire to lose her colonies, but wishes to retain them, while I am satisfied that the public mind of England would deeply regret the loss of these provinces—yet, if the people of British North America after full deliberation had stated that they considered it was for their interest, for the advantage of the future of British North America to sever the tie, such is the generosity of the people of England, that, whatever their desire to keep these colonies, they would not seek to compel us to remain unwilling subjects of the British Crown. If therefore, at the Conference, we had arrived at the conclusion, that it was for the interest of these provinces that a severance should take place, I am sure that Her Majesty and the Imperial Parliament would have sanctioned that severance. We accordingly felt that there was a propriety in giving a distinct declaration of opinion on that point, and that, in framing the Constitution, its first sentence should declare, that "The Executive authority or government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorised." That resolution met with the unanimous assent of the Conference. The desire to remain connected with Great Britain and to retain our allegiance to Her Majesty was unanimous. Not a single suggestion was made, that it could, by any possibility, be for the interest of the colonies, or of any section or portion of them, that there should be a severance of our connection. Although we knew it to be possible that Canada, from her position, might be exposed to all the horrors of war, by reason of causes of hostility arising between Great Britain and the United States—causes over which we had no control, and which we had no hand in bringing about—yet there was a unanimous feeling of willingness to run all the hazards of war, if war must come, rather than lose the connection between the Mother Country and these colonies. We provide that "the Executive authority shall be administered by the Sovereign personally, or by the Representative of the Sovereign duly authorised." It is too much to expect that the Queen should vouchsafe us her personal governance or presence, except to pay us, as the heir apparent of the Throne, our future Sovereign has already paid us, the graceful compliment of a visit. The Executive authority must therefore be administered by Her Majesty's Representative. We place no restriction on Her Majesty's prerogative in the selection of her representative. As it is now, so it will be if this Constitution is adopted. The Sovereign has unrestricted freedom of choice. Whether in making her selection she may send us one of her own family, a Royal Prince, as a Viceroy to rule over us, or one of the great statesmen of England to represent her, we know not. We leave that to Her Majesty in all confidence. But we may be permitted to hope, that when the union takes place, and we become the great country which British North America is certain to be, it will be an object worthy the ambition of the statesmen of England to be charged with presiding over our destinies. Let me now invite the attention of the House to the Provisions in the Constitution respecting the legislative power. The sixth resolution says, "There shall be a general legislature or parliament for the federated provinces, composed of a Legislative Council and a House of Commons." This resolution has been cavilled at in the English press as if it excluded the Sovereign as a portion of the legislature. In one sense, that stricture was just—because in strict constitutional language, the Legislature of England consists of King, Lords and Commons. But, on the other hand, in ordinary parlance we speak of "the King and his Parliament," or "the King summoning his Parliament," the three estates —Lords spiritual, temporal Lords, and the House of Commons, and I observe that such a writer as Hallam occasionally uses the word Parliament in that restricted sense. At best it is merely a verbal criticism. The legislature of British North

[1] Hon. A. A. Dorion.

America will be composed of King, Lords, and Commons. The Legislative Council will stand in the same relation to the Lower House, as the House of Lords to the House of Commons in England, having the same power of initiating all matters of legislation, except the granting of money. As regards the Lower House, it may not appear to matter much, whether it is called the House of Commons or House of Assembly. It will bear whatever name the Parliament of England may choose to give it, but "The House of Commons" is the name we should prefer, as shewing that it represents the Commons of Canada, in the same way that the English House of Commons represents the Commons of England, with the same privileges, the same parliamentary usage, and the same parliamentary authority. In settling the constitution of the Lower House, that which peculiarly represents the people, it was agreed that the principle of representation based on population should be adopted, and the mode of applying that principle is fully developed in these resolutions. When I speak of representation by population, the House will of course understand, that universal suffrage is not in any way sanctioned, or admitted by these resolutions, as the basis on which the constitution of the popular branch should rest. In order to protect local interests, and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated should be represented in the Upper House on the principle of equality. There are three great sections, having different interests, in this proposed Confederation. We have Western Canada, an agricultural country far away from the sea, and having the largest population who have agricultural interests principally to guard. We have Lower Canada, with other and separate interests, and especially with institutions and laws which she jealously guards against absorption by any larger, more numerous, or stronger power. And we have the Maritime Provinces, having also different sectional interests of their own, having, from their position, classes and interests which we do not know in Western Canada. Accordingly, in the Upper House,—the controlling and regulating, but not the initiating branch (for we know that here as in England, to the Lower House will practically belong the initiation of matters of great public interest), in the House which has the sober second thought in legislation—it is provided that each of those great sections shall be represented equally by 24 members. The only exception to that condition of equality is in the case of Newfoundland, which has an interest of its own, lying, as it does, at the mouth of the great river St. Lawrence, and more connected, perhaps, with Canada than with the Lower Provinces. It has, comparatively speaking, no common interest with the other Maritime Provinces, but has sectional interests and sectional claims of its own to be protected. It, therefore has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections. As may be well conceived, great difference of opinion at first existed as to the constitution of the Legislative Council.

In Canada the elective principle prevailed; in the Lower Provinces, with the exception of Prince Edward Island, the nominative principle was the rule. We found a general disinclination on the part of the Lower Provinces to adopt the elective principle; indeed, I do not think there was a dissenting voice in the Conference against the adoption of the nominative principle, except from Prince Edward Island. The delegates from New Brunswick, Nova Scotia and Newfoundland, as one man, were in favour of nomination by the Crown. And nomination by the Crown is of course the system which is most in accordance with the British Constitution. We resolved then, that the constitution of the Upper House should be in accordance with the British system as nearly as circumstances would allow. An hereditary Upper House is impracticable in this young country. Here we have none of the elements for the formation of a landlord aristocracy—no men of large territorial positions—no class separated from the mass of the people. An hereditary body is altogether unsuited to our state of society, and would soon dwindle into nothing. The only mode of adapting the English system to the Upper House, is by conferring the power of appointment on the Crown (as the English peers are appointed), but that the appointment should be for life. The arguments for an elective Council are numerous and strong; and I ought to say so, as one of the Administration responsible for introducing the elective principle into Canada. I hold that this principle has not been a failure in Canada; but there were causes—which we did not take into consideration at the time—why it did not so fully succeed in Canada as we had expected. One great cause was the enormous extent of the constituencies and the immense labour which conse-

quently devolved on those who sought the suffrages of the people for election to the Council. For the same reason the expense—the legitimate expense—was so enormous that men of standing in the country, eminently fitted for such a position, were prevented from coming forward. At first, I admit, men of the first standing did come forward, but we have seen that in every succeeding election in both Canadas there has been an increasing disinclination, on the part of men of standing and political experience and weight in the country, to become candidates; while, on the other hand, all the young men, the active politicians, those who have resolved to embrace the life of a statesman, have sought entrance to the House of Assembly. The nominative system in this country, was to a great extent successful, before the introduction of responsible government. Then the Canadas were to a great extent Crown colonies, and the upper branch of the legislature consisted of gentlemen chosen from among the chief judicial and ecclesiastical dignitaries, the heads of departments, and other men of the first position in this country. Those bodies commanded great respect from the character, standing and weight of the individuals composing them, but they had little sympathy with the people or their representatives, and collisions with the Lower House frequently occurred, especially in Lower Canada. When responsible government was introduced, it became necessary for the Governor of the day to have a body of advisers who had the confidence of the House of Assembly which could make or unmake ministers as it chose. The Lower House in effect pointed out who should be nominated to the Upper House; for the ministry, being dependent altogether on the Lower branch of the legislature for support, selected members for the Upper House from among their political friends at the dictation of the House of Assembly. The Council was becoming less and less a substantial check on the legislation of the Assembly; but under the system now proposed, such will not be the case. No ministry can in future do what they have done in Canada before—they cannot, with the view of carrying any measure, or of strengthening the party, attempt to overrule the independent opinion of the Upper House, by filling it with a number of its partisans and political supporters. The provision in the Constitution, that the Legislative Council shall consist of a limited number of members—that each of the great sections shall appoint twenty-four members and no more, will prevent the Upper House from being swamped from time to time by the ministry of the day, for the purpose of carrying out their own schemes or pleasing their partisans. The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country. The objection has been taken that in consequence of the Crown being deprived of the right of unlimited appointment, there is a chance of a dead-lock arising between the two branches of the legislature; a chance that the Upper House being altogether independent of the Sovereign, of the Lower House, and of the advisers of the Crown, may act independently, and so independently as to produce a dead-lock. I do not anticipate any such result. In the first place we know that in England it does not arise. There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people. Even the House of Lords, which as an hereditary body, is far more independent than one appointed for life can be, whenever it ascertains what is the calm, deliberate will of the people of England, it yields, and never in modern times has there been, in fact or act, any attempt to overrule the decisions of that House by the appointment of new peers, excepting, perhaps, once in the reign of Queen Anne. It is true that in 1832 such an increase was threatened in consequence of the reiterated refusal of the House of Peers to pass the Reform Bill. I have no doubt the threat would have been carried into effect, if necessary; but every one, even the Ministry who advised that step, admitted that it would be a revolutionary act, a breach of the Constitution to do so, and it was because of the necessity of preventing the bloody revolution which hung over the land, if the Reform Bill had been longer refused

to the people of England, that they consented to the bloodless revolution of overriding the independent opinion of the House of Lords on that question. Since that time it has never been attempted, and I am satisfied it will never be attempted again. Only a year or two ago the House of Lords rejected the Paper Duties Bill, and they acted quite constitutionally, according to the letter and as many think, according to the spirit of the Constitution in doing so. Yet when they found they had interfered with a subject which the people's house claimed as belonging of right to themselves, the very next session they abandoned their position, not because they were convinced they had done wrong, but because they had ascertained what was the deliberate voice of the representatives of the people on the subject. In this country, we must remember, that the gentlemen who will be selected for the Legislative Council stand on a very different footing from the peers of England. They have not like them any ancestral associations or position derived from history. They have not that direct influence on the people themselves, or on the popular branch of the legislature, which the peers of England exercise, from their great wealth, their vast territorial possessions, their numerous tenantry and that prestige with which the exalted position of their class for centuries has invested them. The members of our Upper House will be like those of the Lower, men of the people, and from the people. The man put into the Upper House is as much a man of the people the day after, as the day before his elevation. Springing from the people, and one of them, he takes his seat in the Council with all the sympathies and feelings of a man of the people, and when he returns home, at the end of the session, he mingles with them on equal terms, and is influenced by the same feelings and associations, and events, as those which affect the mass around him. And it is, then, to be supposed that the members of the upper branch of the legislature will set themselves deliberately at work to oppose what they know to be the settled opinions and wishes of the people of the country? They will not do it. There is no fear of a dead-lock between the two houses. There is an infinitely greater chance of a dead-lock between the two branches of the legislature, should the elective principle be adopted, than with a nominated chamber—chosen by the Crown, and having no mission from the people. The members of the Upper Chamber would then come from the people as well as those of the Lower House, and should any difference ever arise between both branches, the former could say to the members of the popular branch—"We as much represent the feelings of the people as you do, and even more so; we are not elected from small localities for a short period; you as a body were elected at a particular time, when the public mind was running in a particular channel; you were returned to Parliament, not so much representing the general views of the country, on general questions, as upon the particular subjects which happened to engage the minds of the people when they went to the polls. We have as much right, or a better right, than you to be considered as representing the deliberate will of the people on general questions, and therefore we will not give way." There is, I repeat, a greater danger of an irreconcilable difference of opinion between the two branches of the legislature, if the upper be elective, than if it holds its commission from the Crown. Besides, it must be remembered that an Upper House, the members of which are to be appointed for life, would not have the same quality of permanence as the House of Lords; our members would die; strangers would succeed them, whereas son succeeded father in the House of Lords. Thus the changes in the membership and state of opinion in our Upper House would always be more rapid than in the House of Lords. To show how speedily changes have occurred in the Upper House, as regards life members, I will call the attention of the House to the following facts:—At the call of the House, in February, 1856, forty-two life members responded; two years afterwards, in 1858, only thirty-five answered to their names; in 1862 there were only twenty-five life members left, and in 1864, but twenty-one. This shows how speedily changes take place in the life membership. But remarkable as this change has been, it is not so great as that in regard to the elected members. Though the elective principle only came into force in 1856, and although only twelve men were elected that year, and twelve more every two years since, twenty-four changes have already taken place by the decease of members, by the acceptance of office, and by resignation. So it is clear that, should there be on any question a difference of opinion between the Upper and Lower Houses, the government of the day being obliged to have the confidence of the majority in the popular branch—would, for the purpose of bringing the former into accord

and sympathy with the latter, fill up any vacancies that might occur, with men of the same political feelings and sympathies with the Government, and consequently with those of the majority in the popular branch; and all the appointments of the Administration would be made with the object of maintaining the sympathy and harmony between the two houses. There is this additional advantage to be expected from the limitation. To the Upper House is to be confided the protection of sectional interests; therefore is it that the three great divisions are there equally represented, for the purpose of defending such interests against the combinations of majorities in the Assembly. It will, therefore, become the interest of each section to be represented by its very best men, and the members of the Administration who belong to each section will see that such men are chosen, in case of a vacancy in their section. For the same reason each state of the American Union sends its two best men to represent its interests in the Senate. It is provided in the Constitution that in the first selections for the Council, regard shall be had to those who now hold similar positions in the different colonies. This, it appears to me, is a wise provision. In all the provinces, except Prince Edward, there are gentlemen who hold commissions for the Upper House for life. In Canada, there are a number who hold under that commission, but the majority of them hold by a commission, not, perhaps, from a monarchical point of view so honourable, because the Queen is the fountain of honour,—but still, as holding their appointment from the people, they may be considered as standing on a par with those who have Her Majesty's commission. There can be no reason suggested why those who have had experience in legislation, whether they hold their positions by the election of the people or have received preferment from the Crown—there is no valid reason why those men should be passed over, and new men sought for to form the Legislative Council of the Confederation. It is, therefore, provided that the selection shall be made from those gentlemen who are now members of the upper branch of the Legislature in each of the colonies, for seats in the Legislative Council of the General Legislature. The arrangement in this respect is somewhat similar to that by which Representative Peers are chosen from the Peers of Scotland and Ireland, to sit in the Parliament of the United Kingdom. In like manner, the members of the Legislative Council of the proposed Confederation will be first selected from the existing Legislative Councils of the various provinces. In the formation of the House of Commons, the principle of representation by population has been provided for in a manner equally ingenious and simple. The introduction of this principle presented at first the apparent difficulty of a constantly increasing body until, with the increasing population, it would become inconveniently and expensively large. But by adopting the representation of Lower Canada as a fixed standard—as the pivot on which the whole would turn—that province being the best suited for the purpose, on account of the comparatively permanent character of its population, and from its having neither the largest nor least number of inhabitants—we have been enabled to overcome the difficulty I have mentioned. We have introduced the system of representation by population without the danger of an inconvenient increase in the number of representatives on the recurrence of each decennial period. The whole thing is worked by a simple rule of three. For instance, we have in Upper Canada, 1,400,000 of a population; in Lower Canada 1,100,000. Now, the proposition is simply this—if Lower Canada, with its population of 1,100,000 has a right to 65 members how many members should Upper Canada have, with its larger population of 1,400,000? The same rule applies to the other provinces—the proportion is always observed and the principle of representation by population carried out, while, at the same time, there will not be decennially an inconvenient increase in the numbers of the Lower House. At the same time, there is a constitutional provision that hereafter, if deemed advisable, the total number of representatives may be increased from 194, the number fixed in the first instance. In that case, if an increase is made, Lower Canada is still to remain the pivot on which the whole calculation will turn. If Lower Canada, instead of sixty-five, shall have seventy members, then the calculation will be, if Lower Canada has seventy members, with such a population, how many shall Upper Canada have with a larger population? I was in favor of a larger House than one hundred and ninety-four, but was overruled. I was perhaps singular in the opinion, but I thought it would be well to commence with a larger representation in the lower branch. The arguments against this were, that, in the first place, it would cause additional expense; in the next place, that in a new country like this,

we could not get a sufficient number of qualified men to be representatives. My reply was that the number is rapidly increasing as we increase in education and wealth; that a larger field would be open to political ambition by having a larger body of representatives; that by having numerous and smaller constituencies, more people would be interested in the working of the union, and that there would be a wider field for selection for leaders of governments and leaders of the parties. These are my individual sentiments,—which, perhaps, I have no right to express here—but I was overruled, and we fixed on the number of one hundred and ninety-four, which no one will say is large or extensive, when it is considered that our present number in Canada alone is one hundred and thirty. The difference between one hundred and thirty and one hundred and ninety-four is not great, considering the large increase that will be made to our population when Confederation is carried into effect. While the principle of representation by population is adopted with respect to the popular branch of the legislature, not a single member of the Conference, as I stated before, not a single one of the representatives of the government or of the opposition of any one of the Lower Provinces was in favour of universal suffrage. Every one felt that in this respect the principle of the British Constitution should be carried out, and that classes and property should be represented as well as numbers. Insuperable difficulties would have presented themselves if we had attempted to settle now the qualification for the elective franchise. We have different laws in each of the colonies fixing the qualification of electors for their own local legislatures; and we therefore adopted a similar clause to that which is contained in the Canada Union Act of 1841, viz., that all the laws which affected the qualification of members and of voters, which affected the appointment and conduct of returning officers and the proceedings at elections, as well as the trial of controverted elections in the separate provinces, should obtain in the first election to the Confederate Parliament, so that every man who has now a vote in his own province should continue to have a vote in choosing a representative to the first Federal Parliament. And it was left to the Parliament of the Confederation, as one of their first duties, to consider and to settle by an act of their own the qualification for the elective franchise, which would apply to the whole Confederation. In considering the question of the duration of Parliament, we came to the conclusion to recommend a period of five years. I was in favour of a longer period. I thought that the duration of the local legislatures should not be shortened so as to be less than four years, as at present, and that the General Parliament should have as long a duration as that of the United Kingdom. I was willing to have gone to the extent of seven years; but a term of five years was preferred, and we had the example of the New Zealand carefully considered, not only locally, but by the Imperial Parliament, and which gave the provinces of those islands a general parliament with a duration of five years. But it was a matter of little importance whether five or seven years was the term, the power of dissolution by the Crown having been reserved. I find, on looking at the duration of parliaments since the accession of George III. to the Throne, that excluding the present parliament, there have been seventeen parliaments, the average period of whose existence has been about three years and a half. That average is less than the average duration of the parliaments in Canada since the union, so that it was not a matter of much importance whether we fixed upon five or seven years as the period of duration of our General Parliament. A good deal of misapprehension has arisen from the accidental omission of some words from the 24th resolution. It was thought that by it the local legislatures were to have the power of arranging hereafter, and from time to time of readjusting the different constituencies and settling the size and boundaries of the various electoral districts. The meaning of the resolution is simply this, that for the first General Parliament, the arrangement of constituencies shall be made by the existing local legislatures; that in Canada, for instance, the present Canadian Parliament shall arrange what are to be the constituencies of Upper Canada, and to make such changes as may be necessary in arranging for the seventeen additional members given to it by the Constitution; and that it may also, if it sees fit, alter the boundaries of the existing constituencies of Lower Canada. In short, this Parliament shall settle what shall be the different constituencies electing members to the first Federal Parliament. And so the other provinces, the legislatures of which will fix the limits of their several constituencies in the session in which they adopt the new Constitution. Afterwards the local legislatures may alter their own electoral

limits as they please, for their own local elections. But it would evidently be improper to leave to the Local Legislature the power to alter the constituencies sending members to the General Legislature after the General Legislature shall have been called into existence. Were this the case, a member of the General Legislature might at any time find himself ousted from his seat by an alteration of his constituency by the Local Legislature in his section. No, after the General Parliament meets, in order that it may have full control of its own legislation, and be assured of its position, it must have the full power of arranging and re-arranging the electoral limits of the constituencies as it pleases, such being one of the powers essentially necessary to such a Legislature. I shall not detain the House by entering into a consideration at any length of the different powers conferred upon the General Parliament as contradistinguished from those reserved to the localleg islatures; but any honourable member on examining the list of different subjects which are to be assigned to the General and Local Legislatures respectively, will see that all the great questions which affect the general interests of the Confederacy as a whole, are confided to the Federal Parliament, while the local interests and local laws of each section are preserved intact, and entrusted to the care of the local bodies. As a matter of course, the General Parliament must have the power of dealing with the public debt and property of the Confederation. Of course, too, it must have the regulation of trade and commerce, of customs and excise. The Federal Parliament must have the sovereign power of raising money from such sources and by such means as the representatives of the people will allow. It will be seen that the local legislatures have the control of all local works; and it is a matter of great importance, and one of the chief advantages of the Federal Union and of local legislatures, that each province will have the power and means of developing its own resources and aiding its own progress after its own fashion and in its own way. Therefore all the local improvements, all local enterprises or undertakings of any kind, have been left to the care and management of the local legislatures of each province. It is provided that all "lines of steam or other ships, railways, canals and other works, connecting any two or more of the provinces together or extending beyond the limits of any province," shall belong to the General Government, and be under the control of the General Legislature. In like manner "lines of steamships between the Federated Provinces and other countries, telegraph communication and the incorporation of telegraph companies, and all such works as shall, although lying within any province, be specially declared by the Acts authorizing them to be for the general advantage," shall belong to the General Government. For instance the Welland Canal, though lying wholly within one section, and the St. Lawrence Canals in two only, may be properly considered national works, and for the general benefit of the whole Federation. Again, the census, the ascertaining of our numbers and the extent of our resources, must, as a matter of general interest, belong to the General Government. So also with the defences of the country. One of the great advantages of Confederation is, that we shall have a united, a concerted, and uniform system of defence. We are at this moment with a different militia system in each colony—in some of the colonies with an utter want of any system of defence. We have a number of separate staff establishments, without any arrangement between the colonies as to the means, either of defence or offence. But, under the union, we will have one system of defence and one system of militia organization. In event of the Lower Provinces being threatened, we can send the large militia forces of Upper Canada to their rescue. Should we have to fight on our lakes against a foreign foe, we will have the hardy seamen of the Lower Provinces coming to our assistance and manning our vessels. We will have one system of defence and be one people, acting together alike in peace and in war. The criminal law too—the determination of what is a crime and what is not and how crime shall be punished—is left to the General Government. This is a matter almost of necessity. It is of great importance that we should have the same criminal law throughout these provinces—that what is a crime in one part of British America, should be a crime in every part—that there should be the same protection of life and property as in another. It is one of the defects in the United States system, that each separate state has or may have a criminal code of its own,—that what may be a capital offence in one state may be a venial offence, punishable slightly, in another. But under our Constitution we shall have one body of criminal law, based on the criminal law of England, and operating equally throughout British America, so that a British American, belonging to what

province he may, or going to any other part of the Confederation, knows what his rights are in that respect, and what his punishment will be if an offender against the criminal laws of the land. I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the Constitution of the neighboring Republic. The 33rd provision is of very great importance to the future well-being of these colonies. It commits to the General Parliament the "rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the courts in these provinces." The great principles which govern the laws of all the provinces, with the single exception of Lower Canada, are the same, although there may be a divergence in details; and it is gratifying to find, on the part of the Lower Provinces, a general desire to join together with Upper Canada in this matter, and to procure, as soon as possible, an assimilation of the statutory laws and the procedure in the courts, of all these provinces. At present there is a good deal of diversity. In one of these colonies, for instance, they have no municipal system at all. In another, the municipal system is merely permissive, and has not been adopted to any extent. Although, therefore, a legislative union was found to be almost impracticable, it was understood, so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But to prevent local interests from being over-ridden, the same section makes provision, that, while power is given to the General Legislature to deal with this subject, no change in this respect should have the force and authority of law in any province until sanctioned by the Legislature of that province. The General Legislature is to have power to establish a general Court of Appeal for the Federated Provinces. Although the Canadian Legislature has always had the power to establish a Court of Appeal, to which appeals may be made from the courts of Upper and Lower Canada, we have never availed ourselves of the power. Upper Canada has its own Court of Appeal, so has Lower Canada. And this system will continue until a General Court of Appeal shall be established by the General Legislature. The Constitution does not provide that such a court shall be established. There are many arguments for and against the establishment of such a court. But it was thought wise and expedient to put into the Constitution a power to the General Legislature, that, if after full consideration they think it advisable to establish a General Court of Appeal from all the Superior Courts of all the provinces, they may do so. I shall not go over the other powers that are conferred on the General Parliament. Most of them refer to matters of financial and commercial interest, and I leave those subjects in other and better hands. Besides all the powers that are specifically given in the 37th provision, the last item of this portion of the Constitution confers on the General Legislature the general mass of sovereign legislation, the power to legislate on "all matters of a general character, not specially and exclusively reserved for the local governments and legislatures." This is precisely the provision which is wanting in the Constitution of the United States. It is here that we find the weakness of the American system—the point where the American Constitution breaks down. It is in itself a wise and necesssary provision. We thereby strengthen the Central Parliament, and make the Confederation one people and one government, instead of five peoples and five governments, with merely a point of authority connecting us to a limited and insufficient extent. With respect to the local governments, it is provided that each shall be governed by a chief executive officer, who shall be nominated by the General Government. As this is to be one united province, with the local governments and legislatures subordinate to the General Government and Legislature, it is obvious that the chief executive officer in each of the provinces must be subordinate as well. The General Government assumes towards the local governments precisely the same position as the Imperial Government holds with respect to each of the colonies now: so that as the Lieutenant Governor of each of the different provinces is now appointed directly by the Queen, and is directly responsible, and reports directly to Her, so will the executives of the local governments hereafter be subordinate to the Representative of the Queen, and be responsible and report to him. Objection has been taken that there is an infringement of the Royal prerogative in giving the pardoning power to the local governors, who are not appointed directly by the Crown, but only indirectly by the Chief Executive of the Confederation,

who is appointed by the Crown. This provision was inserted in the Constitution on account of the practical difficulty which must arise if the power is confined to the Governor General. For example, if a question arose about the discharge of a prisoner convicted of a minor offence, say in Newfoundland, who might be in imminent danger of losing his life if he remained in confinement, the exercise of the pardoning power might come too late if it were necessary to wait for the action of the Governor General. It must be remembered that the pardoning power not only extends to capital cases, but to every case of conviction and sentence, no matter how trifling—even to the case of a fine in the nature of a sentence on a criminal conviction. It extends to innumerable cases, where, if the responsibility for its exercise were thrown on the General Executive, it could not be so satisfactorily discharged. Of course there must be, in each province, a legal adviser of the Executive, occupying the position of our Attorney General, as there is in every state of the American Union. This officer will be an officer of the Local Government; but, if the pardoning power is reserved for the Chief Executive, there must, in every case where the exercise of the pardoning power is sought, be a direct communication and report from the local law officer to the Governor General. The practical inconvenience of this was felt to be so great, that it was thought well to propose the arrangement we did, without any desire to infringe upon the prerogatives of the Crown, for our whole action shews that the Conference, in every step they took, were actuated by a desire to guard jealously these prerogatives. It is a subject, however, of Imperial interest, and if the Imperial Government and Imperial Parliament are not convinced by the arguments we will be able to press upon them for the continuation of that clause then, of course, as the over-ruling power, they may set it aside. There are numerous subjects which belong, of right, both to the Local and the General Parliaments. In all these cases it is provided, in order to prevent a conflict of authority, that where there is concurrent jurisdiction in the General and Local Parliaments, the same rule should apply as now applies in cases where there is concurrent jurisdiction in the Imperial and in the Provincial Parliament, and that when the legislation of the one is adverse to or contradictory of the legislation of the other, in all such cases the action of the General Parliament must overrule, *ex necessitate*, the action of the Local Legislature. We have introduced also all those provisions which are necessary in order to the full working out of the British Constitution in these provinces. We provide that there shall be no money votes unless those votes are introduced in the popular branch of the Legislature on the authority of the responsible advisers of the Crown—those with whom the responsibility rests of equalizing revenue and expenditure—that there can be no expenditure or authorization of expenditure by Address or in any other way unless initiated by the Crown on the advice of its responsible advisers. As regards the financial features of the scheme, the arrangements made as to the present liabilities of the several provinces, and the future liabilities of the Confederation, on these and kindred matters, I have no doubt that my honourable friends, the Finance Minister and the President of the Council, will speak at full length, and that they will be able to shew you that this branch of the subject has received the fullest consideration. I feel I would be intruding myself unnecessarily on the House if, with my inferior knowledge of those subjects I were to detain you by venturing to speak of them, when I know that they will be so ably and fully gone into by my two honourable friends. The last resolution of any importance is one which, although not affecting the substance of the Constitution, is of interest to us all. It is that "Her Majesty the Queen be solicited to determine the rank and name of the federated provinces." I do not know whether there will be any expression of opinion in this House on this subject—whether we are to be a viceroyalty, or whether we are still to retain our name and rank as a province. But I have no doubt Her Majesty will give the matter Her gracious consideration, that She will give us a name satisfactory to us all, and that the rank She will confer upon us will be a rank worthy of our position, of our resources, and of our future. Let me again, before I sit down, impress upon this House the necessity of meeting this question in a spirit of compromise, with a disposition to judge the matter as a whole, to consider whether really it is for the benefit and advantage of the country to form a Confederation of all the provinces; and if honourable gentlemen, whatever may have been their preconceived ideas as to the merits of the details of this measure, whatever may still be their opinions as to these details, if they really believe that the scheme is one by which the prosperity of the country

will be increased, and its future progress secured, I ask them to yield their own views, and to deal with the scheme according to its merits as one great whole. One argument, but not a strong one, has been used against this Confederation, that it is an advance towards independence. Some are apprehensive that the very fact of our forming this union will hasten the time when we shall be severed from the mother country. I have no apprehension of that kind. I believe it will have the contrary effect. I believe that as we grow stronger, that, as it is felt in England we have become a people, able from our union, our strength, our population, and the development of our resources, to take our position among the nations of the world, she will be less willing to part with us than she would be now, when we are broken up into a number of insignificant colonies, subject to attack piece-meal without any concerted action or common organization of defence. I am strongly of opinion that year by year, as we grow in population and strength, England will more see the advantages of maintaining the alliance between British North America and herself. Does any one imagine that, when our population instead of three and a-half, will be seven millions, as it will be ere many years pass, we would be one whit more willing than now to sever the connection with England? Would not those seven millions be just as anxious to maintain their allegiance to the Queen and their connection with the Mother Country, as we are now? Will the addition to our numbers of the people in the Lower Provinces, in any way lessen our desire to continue our connection with the Mother Country? I believe the people of Canada East and West to be truly loyal. But, if they can by possibility be exceeded in loyalty, it is by the inhabitants of the Maritime Provinces. Loyalty with them is an overruling passion. In all parts of the Lower Provinces there is a rivalry between the opposing political parties as to which shall most strongly express and most effectively carry out the principle of loyalty to Her Majesty, and the British Crown. When this union takes place, we will be at the outset no inconsiderable people. We find ourselves with a population approaching four millions of souls. Such a population in Europe would make a second, or at least, a third rate power. And with a rapidly increasing population —for I am satisfied that under this union our population will increase in a still greater ratio than ever before—with increased credit—with a higher position in the eyes of Europe—with the increased security we can offer to immigrants, who would naturally prefer to seek a new home in what is known to them as a great country, than in any one little colony or another—with all this I am satisfied that, great as has been our increase in the last twenty-five years since the union between Upper and Lower Canada, our future progress, during the next quarter of a century, will be vastly greater. And when, by means of this rapid increase, we become a nation of eight or nine millions of inhabitants, our alliance will be worthy of being sought by the great nations of the earth. I am proud to believe that our desire for a permanent alliance will be reciprocated in England. I know that there is a party in England—but it is inconsiderable in numbers, though strong in intellect and power—which speaks of the desirability of getting rid of the colonies; but I believe such is not the feeling of the statesmen and the people of England. I believe it will never be the deliberately expressed determination of the Government of Great Britain. The colonies are now in a transition state. Gradually a different colonial system is being developed—and it will become, year by year, less a case of dependence on our part, and of overruling protection on the part of the Mother Country, and more a case of a healthy and cordial alliance. Instead of looking upon us as a merely dependent colony, England will have in us a friendly nation—a subordinate but still a powerful people—to stand by her in North America in peace or in war. The people of Australia will be such another subordinate nation. And England will have this advantage, if her colonies progress under the new colonial system, as I believe they will, that, though at war with all the rest of the world, she will be able to look to the subordinate nations in alliance with her, and owning allegiance to the same Sovereign, who will assist in enabling her again to meet the whole world in arms, as she has done before. And if, in the great Napoleonic war, with every port in Europe closed against her commerce, she was yet able to hold her own, how much more will that be the case when she has a colonial empire rapidly increasing in power, in wealth, in influence, and in position. It is true that we stand in danger, as we have stood in danger again and again in Canada, of being plunged into war and suffering all its dreadful consequences, as the result of causes over which we have no control, by reason of their connection. This, however, did not intimidate us.

At the very mention of the prospect of a war some time ago, how were the feelings of the people aroused from one extremity of British America to the other, and preparations made for meeting its worst consequences. Although the people of this country are fully aware of the horrors of war—should a war arise, unfortunately, between the United States and England, and we all pray it never may—they are still ready to encounter all perils of that kind, for the sake of the connection with England. There is not one adverse voice, not one adverse opinion on that point. We all feel the advantages we derive from our connection with England. So long as that alliance is maintained, we enjoy, under her protection, the privileges of constitutional liberty according to the British system. We will enjoy here that which is the great test of constitutional freedom—we will have the rights of the minority respected. In all countries the rights of the majority take care of themselves, but it is only in countries like England, enjoying constitutional liberty, and safe from the tyranny of a single despot or of an unbridled democracy, that the rights of minorities are regarded. So long, too, as we form a portion of the British Empire, we shall have the example of her free institutions, of the high standard of the character of her statesmen and public men, of the purity of her legislation, and the upright administration of her laws. In this younger country one great advantage of our connection with Great Britain will be, that, under her auspices, inspired by her example, a portion of her empire, our public men will be actuated by principles similar to those which actuate the statesmen at home. These although not material, physical benefits of which you can make an arithmetical calculation, are of such overwhelming advantage to our future interests and standing as a nation, that to obtain them is well worthy of any sacrifices we may be called upon to make, and the people of this country are ready to make them. We should feel, also, sincerely grateful to beneficent Providence that we have had the opportunity vouchsafed us of calmly considering this great constitutional change, this peaceful revolution—that we have not been hurried into it, like the United States, by the exigencies of war—that we have not had a violent revolutionary period forced on us, as in other nations, by hostile action from without, or by domestic dissensions within. Here we are in peace and prosperity, under the fostering government of Great Britain—a dependent people, with a government having only a limited and delegated authority, and yet allowed, without restriction, and without jealousy on the part of the Mother Country, to legislate for ourselves, and peacefully and deliberately to consider and determine the future of Canada and of British North America. It is our happiness to know the expression of the will of our Gracious Sovereign, through Her Ministers, that we have her full sanction for our deliberations, that Her only solicitude is that we shall adopt a system which shall be really for our advantage, and that She promises to sanction whatever conclusion after full deliberation we may arrive at as to the best mode of securing the well-being,—the present and future prosperity of British America,—It is our privilege and happiness to be in such a position, and we cannot be too grateful for the blessings thus conferred upon us. I must apologize for having detained you so long—for having gone perhaps too much into tedious details with reference to the questions bearing on the Constitution now submitted to this House. In conclusion, I would again implore the House not to let this opportunity pass. It is an opportunity that may never recur. At the risk of repeating myself, I would say, it was only by a happy concurrence of circumstances, that we were enabled to bring this great question to its present position. If we do not take advantage of the time, if we show ourselves unequal to the occasion, it may never return, and we shall hereafter bitterly and unavailingly regret having failed to embrace the happy opportunity now offered of founding a great nation under the fostering care of Great Britain, and our Sovereign Lady, Queen Victoria.

Tuesday, *February* 7, 1865.

*Atty. Gen. Cartier* [1] rose to continue the debate on Confederation. He said that he approached this subject with a certain amount of diffidence, knowing it was not the firsttime he had had the honour of speaking upon it in the Lower Provinces and elsewhere. He felt that this was a momentous occasion, as for anything that he said on this grave question, he was responsible to his constituents and the country. Respecting this grave question, it had been said that the *Taché-*

[1] See John Boyd, *Sir George Étienne Cartier* (Toronto, 1914).

*Macdonald* government had taken upon themselves the solution of a problem which was not at the time of its formation before the country, and had not even been mooted. Those saying so were ignorant of the parliamentary history of the past few years. He would briefly refer to the history of this great question, as far as it had been brought before the Parliament and the country. When the *Cartier-Macdonald* Government was constructed, after the downfall of the *Brown-Dorion* Administration, a programme of the policy of the former was laid before Parliament. Among the subjects contained in this programme of 7th August, 1858, was one referred to in the following terms: "The late Government felt themselves bound to carry out the law of the land respecting the seat of Government, but, in the face of the recent vote on that subject, the Administration did not consider themselves warranted in incurring any expenditure for the public building, until Parliament has had an opportunity of considering the whole question in all its bearings; and the expediency of a Federal Union of the British North American Provinces will be anxiously considered, and communication with the Home Government and the Lower Provinces entered into forthwith on the subject; and the result of this communication will be submitted to Parliament at its next session. The Government will, during the recess, examine into the organization and working of the public departments, and carry out such administrative reforms as will be conducive to economy and efficiency." Here was this scheme of a union of the provinces mentioned in the programme of the *Cartier-Macdonald* Government, in 1858. He merely quoted this passage to show that neither Parliament nor the country was now taken by surprise with regard to this scheme. We had had general and special elections since 1858, and to pretend that this subject, which had been so often canvassed, was new to the country, was to assert an untruth. At the close of that session, *Sir Edmund Head*, in his Speech proroguing Parliament, made use of the following language:—"I propose, in the course of the recess, to communicate with Her Majesty's Government, and with the Governments of the sister colonies, on another matter of very great importance. I am desirous of inviting them to discuss with us the principles on which a bond of a federal character, uniting the Provinces of British North America, may prehaps hereafter be practicable." In accordance with that announcement of policy, a deputation was sent to England, composed of his then colleagues, Hons. Messrs. Galt and Ross and himself. We pressed the matter before the Imperial Government, whom we asked to authorize a meeting of delegates from the British North American Governments, to consider this subject and report upon it, said report to be communicated to the Colonial Secretary. Of course we wanted, at that time, to act with the sanction and approval of the Imperial Government. We pressed the matter as strongly as we could before it. Of all the provinces that responded to the call of the Imperial Government, Newfoundland, he thought, was the only one which professed her readiness to appoint delegates when the opportune moment arrived. Although the other provinces were not opposed to Confederation, still, as the question had not been brought conspicuously before their people, they did not like then to join in the measure and in the proceedings which the Canadian delegates had urged upon the Imperial Government in 1858. At this time the Canadian delegates had a duty to perform towards the illustrious Administrator of the Government, *Sir E. Head*, to fulfil the promise he had made, on proroguing Parliament, by pressing the measure upon the attention of the Imperial Administration. The Canadian Government also kept its promise to report to the House the result of the mission to England, at the next session of Parliament. The hon. gentleman here read the despatch dated October, 1858, which was transmitted to the Imperial Government, setting forth the sectional difficulties which had arisen between Upper and Lower Canada, principally on account of the former's demand for increased representation in Parliament, on the ground of its much larger population. Every one who knew anything of his past public course was aware that he was opposed to the principle of representation by population while Upper and Lower Canada were under one Government. He did not regret his opposition. If such a measure had been passed, what would have been the consequence? There would have been constant political warfare between Upper and Lower Canada. True it was that the members from Upper Canada, being in the majority, it might have been imagined that they would have carried everything before them; but as far as justice to Lower Canada was concerned, such might not have been the case. The consequence of representation by population would have been that one

territory would have governed another, and this fact would have presented itself session after session in the House, and day after day in the public prints. The moment this principle had been conceded as the governing element, it would have initiated between the two provinces a warfare which would have been unremitting. He wished that Upper Canada should understand him in this matter. He was accused of being opposed to Upper Canada's rights, because during fifteen or twenty years he had to oppose his honourable friend the President of the Council. His honourable colleague took the ground that representation should be arranged according to population in each section of the province. He (*Hon. Mr. Cartier*) had resisted that position, believeing that the moment such a principle was applied, his honourable friend, who, no doubt, wanted to maintain the peaceful government of the country, would have been disappointed in his wish. It would have given rise to one of the bitterest struggles between the two provinces that ever took place between two nations. He did not mean to say that the majority from Upper Canada would have tyrannized over Lower Canada; but the idea that Upper Canada, as a territory, had the preponderance in the Government by a large number of representatives, would have been sufficient to generate that sectional strife to which he had alluded. In 1858 he first saw that representation by population, though unsuited for application as a governing principle as between the two provinces, would not involve the same objection if other partners were drawn in by a federation. In a struggle between two—one a weak, and the other a strong party—the weaker could not but be overcome; but if three parties were concerned, the stronger would not have the same advantage; as when it was seen by the third that there was too much strength on one side, the third would club with the weaker combatant to resist the big fighter. He did not oppose the principle of representation by population from an unwillingness to do justice to Upper Canada. He took this ground, however, that when justice was done to Upper Canada, it was his duty to see that no injustice was done to Lower Canada. He did not entertain the slightest apprehension that Lower Canada's rights were in the least jeopardized by the provision that in the General Legislature the French Canadians of Lower Canada would have a smaller number of representatives than all the other origins combined. It would be seen by the resolutions that in the questions which would be submitted to the General Parliament there could be no danger to the rights and privileges of either French Canadians, Scotchmen, Englishmen or Irishmen. Questions of commerce, of international communication, and all matters of general interest, would be discussed and determined in the General Legislature, but in the exercise of the functions of the General Government, no one could apprehend that anything could be enacted which would harm or do injustice to persons of any nationality. He did not intend to go into the details of the question of Confederation, but merely to bring before the House the most conspicuous arguments in order to induce members to accept the resolutions submitted by the Government. Confederation was, as it were, at this moment almost forced upon us. We could not shut our eyes to what was going on beyond the lines, where a great struggle was going on between two Confederacies, at one time forming but one Confederacy. We saw that a government, established not more than 80 years ago, had not been able to keep together the family of states which had broke up four or five years since. We could not deny that the struggle now in progress must necessarily influence our political existence. We did not know what would be the result of that great war—whether it would end in the establishment of two Confederacies or in one as before. However, we had to do with five colonies, inhabited by men of the same sympathies and interests, and in order to become a great nation they required only to be brought together under one General Government. The matter resolved itself into this, either we must obtain British North American Confederation or be absorbed in an American Confederation. Some entertained the opinion that it was unnecessary to have British North American Confederation to prevent absorption into the vortex of American Confederation. Such parties were mistaken. We knew the policy of England towards us—that she was determined to help and support us in any struggle with our neighbours. The British Provinces, separated as at present, could not defend themselves alone, and the question resolved itself into this: shall the whole strength of the empire be concentrated into Prince Edward Island, or Canada, as the case may be, in case of a war with the United States—or shall the provinces be left to fight single-handed, disunited? We were not sufficiently

united. We had our duties, with regard to England, to perform. In order to secure the exercise of her power in our defence we must help her ourselves. We could not do this satisfactorily or efficiently unless we had a Confederation. When all united, the enemy would know that, if he attacked any part of those provinces—Prince Edward Island or Canada—he would have to encounter the combined strength of the empire. Canada, separate, would be, although comparatively strong in population and wealth, in a dangerous position should a war ensue. When we had organized our good defensive force, and united for mutual protection, England would send freely here both men and treasure for our defence. He had stated before audiences in the Lower Provinces that, as far as territory, population and wealth were concerned, Canada was stronger than any of the other provinces, but at the same time was wanting in one element necessary to national greatness—the maritime one; and that, owing to the large trade and commerce of Canada, extensive communication with Great Britain at all seasons was absolutely necessary. Twenty years ago our commerce for the year could be managed by communication with Great Britain in the summer months only. At present, however, this system was insufficient, and for winter communication with the seaboard we were left to the caprice of our American neighbours, through whose territory we must pass. He had also alluded to the bonding system, which if the Americans were to withdraw, Canada would be left in winter without any winter harbours. Canada, having two or three elements of national greatness—territory and population—wanted the maritime element; and as he had said,—the Lower Provinces had this element and a sea-board, but not a back country or large population, which Canada possessed,—and for the mutual benefit and prosperity of all the provinces, all these elements ought to be united together. Those who pretended that the British North American Provinces would be in as safe a position, remaining separate, while they belonged to the British Crown, as under Confederation, were under great misapprehension. Now was the time for us to form a great nation of the several provinces. Now was the time to look the matter in the face and adopt the only safe and prudent course open to us in the shape of Confederation. He maintained it was necessary for our own commercial interests, prosperity and efficient defence. That was what we had now to discuss, and not the manner in which Confederation was to be brought about, which would be discussed when the details of the scheme came up for consideration. At present the question was: Was Confederation of the British North American Provinces necessary in order to increase our strength and power and secure to us the continuance of the benefits of British connection? He had no doubt that the measure was necessary for those objects. It would be observed that the English speaking opponents of the scheme, in Lower Canada, pretended a fear of this element being absorbed by the French Canadian; while the opponents, composed of the latter origin—of men who might be called the old Papineau Tail—whose sole idea was annexation to the United States—said they were afraid of the extinction of French Canadian nationality in the great Confederation. The annexation party in Montreal, including the followers of *Mr. John Dougall*, the proprietor of the *Witness*, opposed the scheme on the ground of supposed danger to the British of Lower Canada. The annexation party could not, however, be supposed to be sincere in their opposition to the scheme—except in so far as they desired to carry Canada into the American Union. The absorption of this province into the United States had long been contemplated, as would be seen from the 7th article in the original draft of the American Constitution, which he would read. It was as follows: "Art. 7. Canada, according to this Confederation and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; and shall be equally with any other of the United States, solemnly bound to a strict observance of, and obedience to, these articles; as shall be also any other colony which shall be admitted into this Confederacy. The eleven votes in Congress shall be increased in proportion as the Confederacy is extended. But, except Canada, no other colony shall be admitted into the Confederacy without the assent of eleven or more votes as the case may require, by the Confederation being extended." By that article no new state could go into the union except by the vote of the number of states required to admit a new partner. But, as regarded Canada, no such assent was required; on knocking at the door of the union, she would, as a matter of course, be admitted. The honourable gentleman went on to say that the papers lately contained a report of a meeting at the *Institut Canadien*

of Montreal, where it was resolved that it was for the interests of Lower Canada—in the interests of the French Canadians, were the province to become a part of the American Union.

*Hon. Mr. Dorion* said that was not the case. The honorable gentlemen had misquoted what had passed there.

*Hon. Mr. Cartier* said he was right. If resolutions were not passed, sentiments were expressed to that effect. Then the organ of the Institute—*L'Ordre*, he thought—had set forth that the interests of Lower Canada would be better secured by annexation to the United States than entering into a Confederation with the British American Provinces. It was no wonder then, that the French Canadian annexationists betrayed their purpose in opposition to British North American Confederation, and that their English-speaking colleagues pretended a fear of the rights of their class being jeopardized under Confederation. We knew their object in this—that they were aware that as soon as this project was adopted, there would be no avail in any cry of separation to form a part of the American Union. There had been a good deal of fault-finding and complaint as to the proceedings of the delegates having been conducted with closed doors. Such a course was an absolute necessity. Every one could understand that if all the difficulties arising among the representatives of the five colonies, during the Conference, had gone every morning to the public, it would have been impossible for the delegates to continue to meet, or compromise any of the difficulties that might be expected to spring up. Besides, the proceedings of the American Congress of 1782 was held with closed doors, and their proceedings were not published while matters were progressing. With regard to this, he would quote from a letter of *Col. Mason*, a member of the Convention:—"All communications of the proceedings are forbidden during the sitting of this Convention; this, I think, was a necessary precaution to prevent misrepresentations or mistakes; there being a material difference between the appearance of a subject in its first crude and indigested shape and after it shall have been properly matured and arranged." On the same principle the Conference at Quebec very properly sat with closed doors. We wished, however, that the British Canadian public should know the result of our labours when concluded, and that result the Parliament and people of Canada had before their consideration, and it was for them to discuss its merits. We, on this side of the House—the members of the Government and their supporters—had come to the conclusion that Federation was desirable and necessary; and we were ready to hear the honourable gentlemen on the other side who necessarily, from their standing, were supposed to have devoted their attention to it and appreciated their position, stating what in their opinion would be sufficient in order to maintain ourselves as a British colony on this side of the Atlantic, and to increase in wealth and power. He was aware that some members of the House, and a number of people in Upper Canada, in Lower Canada and in the Lower Provinces, were of opinion that a Legislative Union ought to have taken place instead of a Federal Union. He would say, however, at the outset, that it was impossible to have one Government to deal with all the private and local interests of the several sections of the several provinces forming the combined whole. The next question to be considered, therefore, by those who had set to work to discover a solution of the difficulties under which we had labored, was—what was the best and most practicable mode of bringing the provinces together, so that particular rights and interests should be properly guarded and protected? No other scheme presented itself but the Federation system, and that was the project which now recommended itself to the Parliament of Canada. Some parties—through the press and by other modes—pretended that it was impossible to carry out Federation, on account of the differences of races and religions. Those who took this view of the question were in error. It was just the reverse. It was precisely on account of the variety of races, local interests, etc., that the Federation system ought to be resorted to, and would be found to work well. We were in the habit of seeing in some public journals, and hearing from some public men, that it was a great misfortune indeed there should be a difference of races in this colony—that there should be the distinction of French Canadian from British Canadian. Now, he (*Hon. Mr. Cartier*) desired on this point to vindicate the rights, the merits, and usefulness, so to speak, of those belonging to the French Canadian race. In order to bring these merits and this usefulness more prominently before his hearers, it would be only necessary to allude to the efforts made by them to sustain British power

on this continent, and to point out their adherence to British supremacy in trying times. We were all conversant with the history of the circumstances which had brought about the difficulties between England and her former American colonies in 1775. Lower Canada,—or rather he should say, the Province of Quebec, for the colony was not then known by the name of Canada, but was called the Province of Quebec,—contained the most dense population of any British colony in North America at that time. The accession of Lower Canada was of course an object of envy to the other American colonies, and strenuous efforts were made by those who had resolved to overthrow British power on this continent to induce Canada to ally herself to their cause. As early as 1775, the French Canadians were solemnly addressed in a proclamation by General *Washington*, who called upon them to abandon the flag of their new masters, inasmuch as they could not expect anything from those who differed from them in language, in religion, in race, and in sympathies. But what was the conduct of the French Canadian people under these circumstances—what was the attitude of the clergy and the seigniors? It was right in treating this chapter of our history, to render justice to whom justice was due, and it was truth to say that the seigniors, forming, as they did, the educated class of our population at that early epoch, had fully understood that the object and aim of those who appealed to them was the downfall of the monarchical system in America. A few years only had elapsed at that time since the transfer of the country and its population from the Crown of France to the Crown of Great Britain; but even within that brief interval of time, they were enabled to appreciate the advantages of their new position, notwithstanding the fact that they were still struggling and complaining. The people, as well as the clergy and aristocracy, had understood that it was better for them to remain under the English and Protestant Crown of England, rather than to become republicans. They were proof against the insidious offers of *George Washington*; and not only so, but when the Americans came as invaders, they fought against the armed forces of *Arnold*, *Montgomery* and others. Attempts were made to excite hostility to Federation on the ground that, under the régime of a local legislature, the English Protestant minority would not be fairly dealt with. He thought the way in which the French Canadians had stood by British connection, when there were but few British in the province, was a proof that they would not attempt to deal unjustly now by the British minority, when their numbers were so much greater. On this point, appealing to the evidence of history, he would quote from the work which he had already quoted. At a time when there were, perhaps, hardly a few hundred English Protestant residents in Lower Canada, the address in the name of *Washington*, to which he had already briefly referred, was circulated throughout the country by *Arnold's* invading army. The hon. gentleman here read a number of extracts from General *Washington's* proclamation, addressed to the inhabitants of Canada. It made the most earnest appeals to the Lower Canadians to join the other colonies. "We rejoice," said General *Washington*, "that our enemies have been deceived with regard to you; they have persuaded themselves—they have even dared to say—that the Canadians were not capable of distinguishing between the blessings of liberty and the wretchedness of slavery; that gratifying the vanity of a little circle of nobility would blind the people of Canada. By such artifices they hoped to bend you to their views, but they have been deceived. . . . Come then, my brethren, unite with us in an indissoluble union; let us run together to the same goal. . . . Incited by these motives, and encouraged by the advice of many friends of liberty among you, the grand American Congress have sent an army into your province, under the command of General *Schuyler*—not to plunder but to protect you—to animate and bring forth into action those sentiments of freedom you have disclosed, and which the tools of despotism would extinguish through the whole creation. To co-operate with this design, and to frustrate those cruel and perfidious schemes, which would deluge our frontiers with the blood of women and children, I have despatched Colonel *Arnold* into your country, with a part of the army under my command. I have enjoined upon him, and I am certain that he will consider himself, and act as in the country of his patrons and best friends. Necessaries and accommodations of every kind which you may furnish he will thankfully receive and render the full value. I invite you, therefore, as friends and brethren, to provide him with such supplies as your country affords; and I pledge myself not only for your safety and security, but for an ample compensation. Let no man desert his

habitation—let no one flee as before an enemy. The cause of America and of liberty is the cause of every virtuous American citizen, whatever may be his religion or descent. The united colonies know no distinction but such as slavery, corruption and arbitrary dominion may create. Come then, ye generous citizens, range yourselves under the standard of general liberty—against which all the force of artifice and tyranny will never be able to prevail." It appeared by this address that the most tempting offers and promises had been made by the republican general; but they had failed, nevertheless, to accomplish the desired effect. This, however, was not the only trait of this nature in the history of the French Canadian people. There was another dispatch, or rather proclamation, issued in 1778, by Baron *D'Estaing,* commander of the French fleet, which was acting in aid of the American revolutionary party. The honorable gentleman read some extracts from this proclamation, as follows:—"I shall not ask the military companions of the Marquis of *Lévis,* those who shared his glory, who admired his talents and genius for war, who loved his cordiality and frankness, the principal chracteristics of our nobility, whether there be other names in other nations among which they would be better pleased to place their own. Can the Canadians, who saw the brave *Montcalm* fall in their defence—can they become the enemies of his nephews? Can they fight against their former leaders, and arm themselves against their kinsmen? At the bare mention of their names, the weapons would fall out of their hands. I shall not observe to the ministers of the altars, that their evangelic efforts will require the special protection of Providence, to prevent faith being diminished by example, by worldly interest, and by sovereigns whom force has imposed upon them, and whose political indulgence will be lessened proportionably as those sovereigns shall have less to fear. I shall not observe that it is necessary for religion that those who preach it should form a body in the state; and that in Canada no other body would be more considered, or have more power to do good than that of the priests, taking a part in the Government, since their respectable conduct has merited the confidence of the people. I shall not represent to that people, nor to all my countrymen in general, that a vast monarchy, having the same religion, the same manners, the same language, where they find kinsmen, old friends and brethren, must be an inexhaustible source of commerce and wealth, more easily acquired and better secured by their union with powerful neighbours, than with strangers of another hemisphere, among whom everything is different, and who, jealous and despotic sovereigns would, sooner or later, treat them as a conquered people, and doubtless much worse than their late countrymen, the Americans, who made them victorious. I shall not urge to a whole people, that to join with the United States is to secure their own happiness, since a whole people, when they acquire the right of thinking and acting for themselves, must know their own interest. But I will declare, and I now formally declare in the name of His Majesty, who has authorized and commanded me to do it, that all his former subjects in North America, who shall no more acknowledge the supremacy of Great Britain, may depend upon his protection and support." *D'Estaing* had appealed to their ancestry and their prejudices; he had invoked the names of *Lévis* and *Montcalm,* and endeavored to influence their clergy; but the French Canadians understood their position too well. If they had their institutions, their language and their religion intact to-day, it was precisely because of their adherence to the British Crown. Had they yielded to the appeals of *Washington* and Baron *D'Estaing,* it is probable that there would not have been now a vestige of British power on this continent. But, with the disappearance of British power, they too would have disappeared as French Canadians. These historical facts taught that there should be a mutual feeling of gratitude from the French Canadians towards the British, and from the British towards the French Canadians, for our present position, that Canada is still a British colony. He had had occasion, a moment ago, to refer to the French Canadian clergy in connection with *D'Estaing's* address, and he would say this, to their honor and credit, that, if to-day Canada was a portion of the British Empire, it was due to the conservatism of the French Canadian clergy. It was a pleasure to him thus to be able to quote from these old documents proofs of the honour, loyalty, and liberality of the French Canadian people. He (Hon. Mr. *Cartier*) was as devoid of prejudice as any honourable gentleman in this House; but when he heard or read the statements occasionally made, that there was some danger that, under the Federation system, the French Canadians would have too much power, and that the power thus obtained

would be used to the prejudice of the British and Protestant minority—the history of the past, in many instances, was the best reply to such attacks. Baron *D'Estaing* issued his tempting proclamation in 1778, and it was sent into Canada frequently afterwards, and circulated at the instigation of *Rochambeau* and *Lafayette*; but our clergy and our aristocracy, the leaders of our people in these days, saw that it was not their interest to cast their lot with the democratic element—they knew the hollowness of democracy. We found ourselves at the present day discussing the question of the Federation of the British North American Provinces, while the great Federation of the United States of America was broken up and divided against itself. There was, however, this important difference to be observed in considering the action of the two peoples. They had founded Federation for the purpose of carrying out and perpetuating democracy on this continent; but we, who had the benefit of being able to contemplate republicanism in action during a period of eighty years, saw its defects, and felt convinced that purely democratic institutions could not be conducive to the peace and prosperity of nations. We are not now discussing the great problem presented to our consideration, in order to propagate democratic principles. Our attempt was for the purpose of forming a Federation with a view of perpetuating the monarchical element. The distinction, therefore, between ourselves and our neighbors was just this:—In our Federation the monarchical principle would form the leading feature, while on the other side of the lines, judging by the past history and present condition of the country, the ruling power was the will of the mob, the rule of the populace. Every person who had conversed with the most intelligent American statesmen and writers must have learned that they all admitted that the governmental powers had become too extended, owing to the introduction of universal suffrage, and mob rule had consequently supplanted legitimate authority; and we now saw the sad spectacle of a country torn by civil war, and brethren fighting against brethren. The question for us to ask ourselves was this: Shall we be content to remain separate—shall we be content to maintain a mere provincial existence, when, by combining together, we could become a great nation? It had never yet been the good fortune of any group of communities to secure national greatness with such facility. In past ages, warriors had struggled for years for the addition to their country of a single province. We had too, for instance, in our own days, the case of *Napoleon III*, who, after great expenditure of blood and treasure in the Italian difficulty, had acquired Savoy and Nice, by which he had obtained an addition of nearly one million inhabitants to France—only one million souls, and if any person were for a moment to make a calculation of the value of the provinces acquired on one side, and the great cost on the other, he would at once see the great disproportion between the one and the other, and so ascertain the fact that the territory acquired did not compensate the outlay. Here, in British North America, we had five different communities inhabiting five separate colonies. We had the same sympathies, and we all desired to live under the British Crown. We had our commercial interests besides. It was of no use whatever that New Brunswick, Nova Scotia and Newfoundland should have their several custom houses against our trade, or that we should have custom houses against the trade of those provinces. In ancient times, the manner in which a nation grew up was different from that of the present day. Then the first weak settlement increased into a village, which, by turns, became a town and a city, and the nucleus of a nation. It was not so in modern times. Nations were now formed by the agglomeration of communities having kindred interests and sympathies. Such was our case at the present moment. Objection had been taken to the scheme now under consideration, because of the words "new nationality." Now, when we were united together, if union were attained, we would form a political nationality with which neither the national origin, nor the religion of any individual, would interfere. It was lamented by some that we had this diversity of races, and hopes were expressed that this distinctive feature would cease. The idea of unity of races was utopian—it was impossible. Distinctions of this kind would always exist. Dissimilarity, in fact, appeared to be the order of the physical world and of the moral world, as well as in the political world. But with regard to the objection based on this fact, to the effect that a great nation could not be formed because Lower Canada was in great part French and Catholic, and Upper Canada was British and Protestant, and the Lower Provinces were mixed, it was futile, and worthless in the extreme. Look, for instance, at the United Kingdom,

inhabited as it was by three great races. Had the diversity of race impeded the glory, the progress, the wealth of England? Had they not rather each contributed their share to the greatness of the Empire? Of the glories of the senate, the field, and the ocean, of the successes of trade and commerce, how much was contributed by the combined talents, energy and courage of the three races together? In our own Federation we should have Catholic and Protestant, English, French, Irish and Scotch, and each by his efforts and his success would increase the prosperity and glory of the new Confederacy. He viewed the diversity of races in British North America in this way: we were of different races, not for the purpose of warring against each other, but in order to compete and emulate for the general welfare. We could not do away with the distinctions of race. We could not legislate for the disappearance of the French Canadians from American soil, but British and French Canadians alike could appreciate and understand their position, relative to each other. They were placed like great families beside each other, and their contact produced a healthy spirit of emulation. It was a benefit rather than otherwise that we had a diversity of races. Of course, the difficulty, it would be said, would be to deal fairly by the minority. In Upper Canada the Catholics would find themselves in a minority; in Lower Canada the Protestants would be in a minority, while the Lower Provinces were divided. Under such circumstances, would any one pretend that either the local or general governments would sanction any injustice? What would be the consequence, even supposing any such thing were attempted by any one of the local governments? It would be censured everywhere. Whether it came from Upper Canada or from Lower Canada, any attempt to deprive the minority of their rights would be at once thwarted. Under the Federation system, granting to the control of the General Government these large questions of general interest in which the differences of race or religion had no place, it could not be pretended that the rights of either race or religion could be invaded at all. We were to have a General Parliament to deal with the matters of defence, tariff, excise, public works, and these matters absorbed all individual interest. Now, he would ask those self-styled nationalists who accused him of bartering fifty-eight counties in Lower Canada to John Bull, and his honorable colleague beside him (Hon. Mr. *Brown*)—he would ask them, under what supposition could they think it possible for any injustice to be done to the French Canadians by the General Government? He came now to the subject of Local Governments. We could easily understand how a feeling against the Federation project was raised in the minds of a few of the British residents of Lower Canada by fears of such difficulties as those which occurred in the days of Mr. *Papineau*, relative to the passing of laws relating to commercial matters. These difficulties had been of a very inconvenient nature, Mr. *Papineau* not being a commercial man, and not understanding the importance of these measures. He considered Mr. *Papineau* was right in the struggle he maintained against the oligarchy at that time in power; but he had never approved of the course he took with reference to commercial matters, and in opposition to measures for the improvement of the country. But this precedent could not be urged as an objection to Federation, inasmuch as it would be for the General Government to deal with our commercial matters. There could be no reason for well-grounded fear that the minority could be made to suffer by means of any laws affecting the rights of property. If any such enactments were passed, they would fall upon the whole community. But even supposing such a thing did occur, there was a remedy provided under the proposed Constitution. The magnitude of the scheme now submitted was, perhaps, the reason why those who had not made themselves conversant with the question felt some apprehension in contemplating it; but, when we came to discuss it clause by clause, he would be ready to state that no interest would be harmed in any way if Federation took place. It was true, that opposition was being offered in Montreal, by Mr. *John Dougall*, of the *Witness*. And, while referring to the opponents of Federation, he could not help adverting to the strange manner in which extremes met and worked in unison to oppose Federation. For instance, we had the party who formerly composed what might be styled Mr. *Papineau's* Tail—the extreme democratic party—joined with Mr. *Dougall's* Tail.

*Mr. Perrault*[1]—And members of the clergy oppose it.

*Hon. Mr. Cartier* said the honorable gentleman was mistaken. The clergy were for it. But the honorable gentleman would have an opportunity of speaking

[1] Joseph F. Perrault, member for Richelieu.

afterwards. This scheme, he repeated, met with the approval of all moderate men. The extreme men, the socialists, democrats and annexationists were opposed to it. The French Canadian opponents of the project were, it appeared, afraid that their religious rights would suffer under the new arrangement. Fancy the celebrated *Institut Canadien*, of Montreal, under the lead of citizen *Blanchet*, taking religion under their protection! Mr. *Dougall* loudly proclaimed that the British Protestant minority would be entirely placed at the mercy of the French Canadians. He (Hon. Mr. *Cartier*) thought the arguments of the young French gentlemen belonging to the national democratic party who cried out that their religion and nationality would be destroyed, ought in all reason to be sufficient to satisfy the scruples and calm the fears of Mr. *Dougall*. The *True Witness*, which was also one of the enemies of the scheme, said that if it were adopted the French Canadians were doomed; while his brother in violence, the *Witness*, said that the Protestants were doomed. At a meeting recently held in Montreal on the subject, he (hon. Mr. *Cartier*) observed that Mr. *Cherrier* had enrolled himself among the enemies of the project. Well, this fine, quiet, old gentleman announced that he had come out of his political retirement for the purpose of opposing Federation. All he (Hon. Mr. *Cartier*) could say was that he never knew Mr. *Cherrier* was a strong politician. However, it appeared that he had come out once more on the political stage for the purpose of opposing this villainous scheme, which was intended to destroy the nationality and religion of the French Canadians—all brought about by that confounded *Cartier*! Allusion had been made to the opinion of the clergy. Well, he would say that the opinion of the clergy was for Confederation. Those who were high in authority, as well as those who occupied more humble positions, were in favour of Federation, not only because they saw in it so much security for all they held dear, but because it was just to their Protestant fellow-subjects as well, because they were opposed to political bickering and strife. This opposition to a state of political dissention and trouble was the general feeling of the clergy, and because they saw in Confederation a solution of those difficulties which had existed for some time, due regard being had to just rights, they were favorable to the project. The fact, however, was that when we saw such extreme opponents as Mr. *Clerk*, of the *True Witness*, Mr. *Dougall*, of the *Witness*, and the young gentlemen of the *Institut Canadien* combined to resist Confederation, because each party argued it would produce the most widely different results—we might look upon this fact, he repeated, as one of the strongest arguments in favor of Confederation. We had, on the other hand, all the moderate men, all that was respectable and intelligent, including the clergy, favourable to Federation. He did not, of course, mean to say that there were not respectable opponents to the project—what he did mean, however, was that it met general approval from the classes referred to. He was opposed, he might as well state most distinctly, to the democratic system which obtained in the United States. In this country of British North America we should have a distinct form of government, the characteristic of which would be to possess the monarchical element. When we had Confederation secured, there was not the least doubt but that our Government would be more respectable —that it would have more prestige, and command more respect from our neighbours. The great want under the American form—the point which they all admitted formed the great defect—was the absence of some respectable executive element. How was the head of the United States Government chosen? Candidates came forward, and of course each one was abused and vilified as corrupt, ignorant, incapable and unworthy by the opposite party. One of them attained the presidential chair; but even while in that position he was not respected by those who had opposed his election, and who tried to make him appear the most corrupt and contemptible being in creation. Such a system could not produce an executive head who would command respect. Under the British system, ministers might be abused and assailed but that abuse never reached the Sovereign. Whether we were made a kingdom or a vice-royalty—whatever name or grade was assigned to us—we would undoubtedly have additional prestige. He would now conclude his remarks by asking honorable gentlemen to consider well this scheme. It was his hope, his cherished hope, that it would be adopted by the House. The time was opportune, as his honourable colleague (Atty. Gen. *Macdonald*) had so ably stated last evening; the opportunity might never offer itself again in such a facile and propitious manner. We knew we had, in all our proceedings, the approbation of the Imperial Government. So if these resolutions

were adopted by Canada, as he had no doubt they would, and by the other Colonial Legislatures, the Imperial Government would be called upon to pass a measure which would have for its effect to give a strong central or general government and local governments which would at once secure and guard the persons, the properties and the civil and religious rights belonging to the population of each section.

Tuesday, *February* 7, 1865.

*Hon. Mr. Galt*[1]—. . . . It is a matter for regret on the part of all of us that the trade between these colonies—subject all to the same Sovereign, connected with the same empire—has been so small. Intercolonial trade has been, indeed, of the most insignificant character; we have looked far more to our commercial relations with the neighbouring—though a foreign country,—than to the interchange of our own products, which would have retained the benefits of our trade within ourselves; hostile tariffs have interfered with the free interchange of the products of the labour of all the colonies, and one of the greatest and most immediate benefits to be derived from their union, will spring from the breaking down of these barriers and the opening up of the markets of all the provinces to the different industries of each. In this manner we may hope to supply Newfoundland and the great fishing districts of the Gulf, with the agricultural productions of Western Canada; we may hope to obtain from Nova Scotia our supply of coal; and the manufacturing industry of Lower Canada may hope to find more extensive outlets in supplying many of those articles which are now purchased in foreign markets. For instance Newfoundland produces scarcely anything by agriculture, manufactures hardly an article of clothing, and a considerable trade may thus be expected to arise; while, instead of having payments made, as they are now, through Lombard street, they will be made through our own bankers in Montreal and elsewhere. If we require to find an example of the benefits of free commercial intercourse, we need not look beyond the effects that have followed from the working of the Reciprocity Treaty with the United States. In one short year from the time when that treaty came into operation, our trade in the natural productions of the two countries swelled from less than $2,000,000 to upwards of $20,000,000 per annum, and now, when we are threatened with an interruption of that trade—when we have reason to fear that the action of the United States will prove hostile to the continuance of free commercial relations with this country—when we know that the consideration of this question is not grounded on just views of the material advantages resulting to each country—but that the irritation connected with political events exercises a predominant influence over the minds of American statesmen, it is the duty of the House to provide, if possible, other outlets for our productions. If we have reason to fear that one door is about to be closed to our trade, it is the duty of the House to endeavour to open another; to provide against a coming evil of the kind feared by timely expansion in another direction; to seek by free trade with our own fellow-colonists for a continued and uninterrupted commerce which will not be liable to be disturbed at the capricious will of any foreign country. On this ground, therefore, we may well come to the conclusion that the union between these colonies is demanded alike on account of their extensive resources, and because of the peculiar position in which they stand relatively to each other, to Great Britain, and to the United States. All these are questions which fall within the province of the General Government, as proposed in the resolutions before the House, and whatever may be the doubts and fears of any one with respect to the details of the organization by which it is proposed to work the new system of Confederation, no one can doubt that the great interests of trade and commerce will be best promoted and developed by being entrusted to one central power, which will wield them in the common interest. . . .

Wednesday, *February* 8, 1865.

*Hon. George Brown*[2] rose and said: Mr. *Speaker*, it is with no ordinary gratification I rise to address the House on this occasion. I cannot help feeling that the struggle of half a life-time for constitutional reform—the agitations in the country, and the fierce contests in this chamber—the strife and the discord and the abuse of many years,—are all compensated by the great scheme of reform which is

[1] Member for Sherbrooke (Town) and minister of finance.
[2] Member for Oxford (South Riding) and president of the council.

now in your hands. The Attorney General for Upper Canada,[1] as well as the Attorney General for Lower Canada,[2] in addressing the House last night, were anxious to have it inderstood that this scheme for uniting British America under one government, is something different from "representation by population,"—is something different from "joint authority,"—but is in fact the very scheme of the Government of which they were members in 1858. Now, sir, it is all very well that my honorable friends should receive credit for the large share they have contributed towards maturing the measure before the House; but I could not help reflecting while they spoke, that if this was their very scheme in 1858, they succeeded wonderfully in bottling it up from all the world except themselves —and I could not help regretting that we had to wait till 1864 until this mysterious plant of 1858 was forced to fruition. For myself, sir, I care not who gets the credit of this scheme,—I believe it contains the best features of all the suggestions that have been made in the last ten years for the settlement of our troubles; and the whole feeling in my mind now is one of joy and thankfulness that there were found men of position and influence in Canada who, at a moment of serious crisis, had nerve and patriotism enough to cast aside political partisanship, to banish personal considerations, and unite for the accomplishment of a measure so fraught with advantage to their common country. It was a bold step in the then existing state of public feeling for many members of the House to vote for the Constitutional Committee moved for by me last session—it was a very bold step for many of the members of that committee to speak and vote candidly upon it—it was a still bolder thing for many to place their names to the report that emanated from that committee,—but it was an infinitely bolder step for the gentlemen who now occupy these treasury benches, to brave the misconceptions and suspicions that would certainly attach to the act, and enter the same Government. And it is not to be denied that such a Coalition demanded no ordinary justification. But who does not feel that every one of us has to-day ample justification and reward for all we did in the document now under discussion? But seven short months have passed away since the Coalition Government was formed, yet already are we submitting a scheme well-weighed and matured, for the erection of a future empire,—a scheme which has been received at home and abroad with almost universal approval. . . .

Since the Coalition was formed, and its policy of Federal union announced, there have been no fewer than twenty-five parliamentary elections—fourteen for members of the Upper House, and eleven for members of the Lower House. At the fourteen Upper House contests, but three candidates dared to show themselves before the people in opposition to the Government scheme; and of these, two were rejected, and one—only one—succeeded in finding a seat. At the eleven contests for the Lower House, but one candidate on either side of politics ventured to oppose the scheme, and I hope that even he will yet cast his vote in favor of Confederation. Of these twenty-five electoral contests, fourteen were in Upper Canada, but not at one of them did a candidate appear in opposition to our scheme. And let it be observed how large a portion of the country these twenty-five electoral districts embraced. It is true that the eleven Lower House elections only included that number of counties, but the fourteen Upper House elections embraced no fewer than forty counties. Of the 130 constituencies, therefore, into which Canada is divided for representation in this chamber, not fewer than fifty have been called on since our scheme was announced to pronounce at the polls their verdict upon it, and at the whole of them but four candidates on both sides of politics ventured to give it opposition. Was I not right then in asserting that the electors of Canada had, in the most marked manner, pronounced in favour of the scheme? And will honourable gentlemen deny that the people and press of Great Britain have received it with acclamations of approval?—that the Government of England have cordially endorsed and accepted it?—aye, that even the press and the public men of the United States have spoken of it with a degree of respect they never before accorded to any colonial movement? Sir, I venture to assert that no scheme of equal magnitude, ever placed before the world, was received with higher eulogiums, with more universal approbation, than the measure we have now the honour of submitting for the acceptance of the Canadian Parliament. And no higher eulogy could, I think, be pronounced than that I heard a few weeks ago from the lips of one of the foremost of British statesmen, that the system of government we proposed seemed to him a happy

[1] J. A. Macdonald. [2] G. Étienne Cartier.

compound of the best features of the British and American Constitutions. And well, Mr. *Speaker*, might our present attitude in Canada arrest the earnest attention of other countries. Here is a people composed of two distinct races, speaking different languages, with religious and social and municipal and educational institutions totally different; with sectional hostilities of such a character as to render government for many years well-nigh impossible; with a Constitution so unjust in the view of one section as to justify any resort to enforce a remedy. And yet, sir, here we sit, patiently and temperately discussing how these great evils and hostilities may justly and amicably be swept away forever. We are endeavoring to adjust harmoniously greater difficulties than have plunged other countries into all the horrors of civil war. We are striving to do peacefully and satisfactorily what Holland and Belgium, after years of strife, were unable to accomplish. We are seeking by calm discussion to settle questions that Austria and Hungary, that Denmark and Germany, that Russia and Poland, could only crush by the iron heel of armed force. We are seeking to do without foreign intervention that which deluged in blood the sunny plains of Italy. We are striving to settle forever issues hardly less momentous than those that have rent the neighbouring republic and are now exposing it to all the horrors of civil war. Have we not then, Mr. *Speaker*, great cause of thankfulness that we have found a better way for the solution of our troubles than that which has entailed on other countries such deplorable results? And should not every one of us endeavour to rise to the magnitude of the occasion, and earnestly seek to deal with this question to the end in the same candid and conciliatory spirit in which, so far, it has been discussed? The scene presented by this chamber at this moment, I venture to affirm, has few parallels in history. One hundred years have passed away since these provinces became by conquest part of the British Empire. I speak in no boastful spirit—I desire not for a moment to excite a painful thought—what was then the fortune of war of the brave French nation, might have been ours on that well-fought field. I recall those olden times merely to mark the fact that here sit to-day the descendants of the victors and the vanquished in the fight of 1759, with all the differences of language, religion, civil law, and social habit, nearly as distinctly marked as they were a century ago. Here we sit to-day seeking amicably to find a remedy for constitutional evils and injustice complained of—by the vanquished? No, sir—but complained of by the conqueror! Here sit the representatives of the British population claiming justice—only justice; and here sit the representatives of the French population, discussing in the French tongue whether we shall have it. One hundred years have passed away since the conquest of Quebec, but here sit the children of the victor and the vanquished, all avowing hearty attachment to the British Crown—all earnestly deliberating how we shall best extend the blessings of British institutions—how a great people may be established on this continent in close and hearty connection with Great Britain. Where, sir, in the page of history, shall we find a parallel to this? Will it not stand as an imperishable monument to the generosity of British rule? And it is not in Canada alone that this scene is being witnessed. Four other colonies are at this moment occupied as we are—declaring their hearty love for the parent State, and deliberating with us how they may best discharge the great duty entrusted to their hands, and give their aid in developing the teeming resources of these vast possessions. And well, Mr. *Speaker*, may the work we have unitedly proposed rouse the ambition and energy of every true man in British America. Look, sir, at the map of the continent of America, and mark that island (Newfoundland) commanding the mouth of the noble river that almost cuts our continent in twain. Well, sir, that island is equal in extent to the kingdom of Portugal. Cross the straits to the mainland, and you touch the hospitable shore of Nova Scotia, a country as large as the kingdom of Greece. Then mark the sister province of New Brunswick—equal in extent to Denmark and Switzerland combined. Pass up the river St. Lawrence to Lower Canada—a country as large as France. Pass on to Upper Canada,—twenty thousand square miles larger than Great Britain and Ireland put together. Cross over the continent to the shores of the Pacific, and you are in British Columbia, the land of golden promise,—equal in extent to the Austrian Empire. I speak not now of the vast Indian Territories that lie between—greater in extent than the whole soil of Russia—and that will ere long, I trust, be opened up to civilization under the auspices of the British American Confederation. Well, sir, the bold scheme in your hands is nothing less than to gather all these countries into one—to

organize them all under one government, with the protection of the British flag, and in heartiest sympathy and affection with our fellow-subjects in the land that gave us birth. Our scheme is to establish a government that will seek to turn the tide of European emigration into this northern half of the American continent—that will strive to develop its great natural resources—and that will endeavour to maintain liberty, and justice, and christianity throughout the land. . . . What possible inducement could we have to urge this scheme, except our earnest and heartfelt conviction that it will inure to the solid and lasting advantage of our country? There is one consideration, Mr. *Speaker*, that cannot be banished from this discussion, and that ought, I think, to be remembered in every word we utter; it is that the constitutional system of Canada cannot remain as it is now. Something must be done. We cannot stand still. We cannot go back to chronic sectional hostility and discord—to a state of perpetual Ministerial crises. The events of the last eight months cannot be obliterated; the solemn admissions of men of all parties can never be erased. The claims of Upper Canada for justice must be met, and met now. I say, then, that every one who raises his voice in hostility to this measure is bound to keep before him, when he speaks, all the perilous consequences of its rejection,—I say that no man who has a true regard for the well-being of Canada, can give a vote against this scheme, unless he is prepared to offer, in amendment, some better remedy for the evils and injustice that have so long threatened the peace of our country. And not only must the scheme proposed in amendment be a better scheme—it must be something that can be carried. I see an honourable friend now before me, for whose opinions I have the very highest respect, who says to me: "Mr. *Brown*, you should not have settled this part of the plan as you have done; here is the way you should have framed it." "Well, my dear sir," is my reply, "I perfectly agree with you, but it could not be done. Whether we ask for parliamentary reform for Canada alone or in union with the Maritime Provinces, the French Canadians must have their views consulted as well as us. This scheme can be carried, and no scheme can be that has not the support of both sections of the province."

*Hon. Mr. Cartier*—Hear, hear! there is the question!

*Hon. Mr. Brown*—Yes, this is the question and the whole question. No constitution ever framed was without defect; no act of human wisdom was ever free from imperfection; no amount of talent and wisdom and integrity combined in preparing such a scheme could have placed it beyond the reach of criticism. And the framers of this scheme had immense special difficulties to overcome. We had the prejudices of race and language and religion to deal with; and we had to encounter all the rivalries of trade and commerce, and all the jealousies of diversified local interests. To assert, then, that our scheme is without fault, would be folly. It was necessarily the work of concession; not one of the thirty-three framers but had, on some points, to yield his opinions; and, for myself, I freely admit that I struggled earnestly, for days together, to have portions of the scheme amended. But, Mr. *Speaker*, admitting all this—admitting all the difficulties that beset us—admitting frankly that defects in the measure exist—I say that, taking the scheme as a whole, it has my cordial, enthusiastic support, without hesitation or reservation. I believe it will accomplish all, and more than all, that we, who have so long fought the battle of parliamentary reform, ever hoped to see accomplished. I believe that, while granting security for local interests, it will give free scope for carrying out the will of the whole people in general matters—that it will draw closer the bonds that unite us to Great Britain—and that it will lay the foundations deep and strong of a powerful and prosperous people. And if the House will allow me to trespass to a somewhat unusual degree on its indulgence, I am satisfied that I can clearly establish that such are the results fairly to be anticipated from the measure. Mr. *Speaker*, there are two views in which this scheme may be regarded, namely, the existing evils it will remedy, and the new advantages it will secure for us as a people. Let us begin by examining its remedial provisions. First, then, it applies a complete and satisfactory remedy to the injustice of the existing system of parliamentary representation. The people of Upper Canada have bitterly complained that though they number four hundred thousand souls more than the population of Lower Canada, and though they have contributed three or four pounds to the general revenue for every pound contributed by the sister province, yet the Lower Canadians send to Parliament as many representatives as they do. Now, sir, the measure in your hands brings this injustice to an end;—it sweeps away

the line of demarcation between the two sections on all matters common to the whole province; it gives representation according to numbers wherever found in the House of Assembly; and it provides a simple and convenient system for re-adjusting the representation after each decennial census. To this proposed constitution of the Lower Chamber, I have heard only two objections. It has been alleged that until after the census of 1871, the number of members is to remain as at present; but this is a mistake. Upper Canada is to receive from the start eighty-two representatives, and Lower Canada sixty-five; and whatever increase the census of 1871 may establish will be then adjusted. It has also been objected that though the resolutions provide that the existing Parliament of Canada shall establish the electoral divisions for the first organization of the Federal Parliament, they do not determine in whose hands the duty of distributing any additional members is to be vested. No doubt on this head need exist; the Federal Parliament will of course have full power to regulate all arrangements for the election of its own members. But I am told by Upper Canadians—the constitution of the Lower House is all well enough, it is in the Upper House arrangements that the scheme is objectionable. And first, it is said that Upper Canada should have had in the Legislative Council a greater number of members than Lower Canada.

*Mr. T. C. Wallbridge*—Hear, hear!

*Hon. Mr. Brown*—The honourable member for North Hastings is of that opinion; but that honourable gentleman is in favour of a legislative union, and had we been forming a legislative union, there might have been some force in the demand. But the very essence of our compact is that the union shall be federal and not legislative. Our Lower Canada friends have agreed to give us representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step; and, for my part, I am quite willing they should have it. In maintaining the existing sectional boundaries and handing over the control of local matters to local bodies, we recognize, to a certain extent, a diversity of interests; and it was quite natural that the protection for those interests, by equality in the Upper Chamber, should be demanded by the less numerous provinces. Honourable gentlemen may say that it will erect a barrier in the Upper House against the just influence that Upper Canada will exercise, by her numbers, in the Lower House over the general legislation of the country. That may be true, to a certain extent, but honourable gentlemen will bear in mind that that barrier, be it more or less, will not affect money bills. Hitherto we have been paying a vast proportion of the taxes, with little or no control over the expenditure. But, under this plan, by our just influence in the Lower Chamber, we shall hold the purse strings. If, from this concession of equality in the Upper Chamber, we are restrained from forcing through measures which our friends of Lower Canada may consider injurious to their interest, we shall, at any rate, have power, which we never had before, to prevent them from forcing through whatever we may deem unjust to us. I think the compromise a fair one, and am persuaded that it will work easily and satisfactorily. But it has been said that the members of the Upper House ought not to be appointed by the Crown, but should continue to be elected by the people at large. On that question my views have been often expressed. I have always been opposed to a second elective chamber, and I am so still, from the conviction that two elective houses are inconsistent with the right working of the British parliamentary system. I voted, almost alone, against the change when the Council was made elective, but I have lived to see a vast majority of those who did the deed wish it had not been done. It is quite true, and I am glad to acknowledge it, that many evils anticipated from the change, when the measure was adopted, have not been realized. I readily admit that men of the highest character and position have been brought into the Council by the elective system, but it is equally true that the system of appointment brought into it men of the highest character and position. Whether appointed by the Crown or elected by the people, since the introduction of parliamentary government, the men who have composed the Upper House of this Legislature have been men who would have done honour to any legislature in the world. But what we most feared was, that the Legislative Councillors would be elected under party responsibilities; that a partisan spirit would soon show itself in the chamber; and that the right would soon be asserted to an equal control with this House over money bills. That fear has not been realised to any dangerous extent. But

is it not possible that such a claim might ere long be asserted? Do we not hear, even now, mutterings of a coming demand for it? Nor can we forget that the elected members came into that chamber gradually; that the large number of old appointed members exercised much influence in maintaining the old forms of the House, the old style of debate, and the old barriers against encroachment on the privileges of the commons. But the appointed members of the Council are gradually passing away, and when the elective element becomes supreme, who will venture to affirm that the Council would not claim that power over money bills which this House claims as of right belonging to itself? Could they not justly say that they represent the people as well as we do, and that the control of the purse strings ought, therefore, to belong to them as much as to us? It is said they have not the power. But what is to prevent them from enforcing it? Suppose we had a conservative majority here, and a reform majority above—or a conservative majority above and a reform majority here—all elected under party obligations,—what is to prevent a dead-lock between the chambers? It may be called unconstitutional—but what is to prevent the Councillors (especially if they feel that in the dispute of the hour they have the country at their back) from practically exercising all the powers that belong to us? They might amend our money bills, they might throw out all our bills if they liked, and bring to a stop the whole machinery of government. And what could we do to prevent them? But, even supposing this were not the case, and that the elective Upper House continued to be guided by that discretion which has heretofore actuated its proceedings,—still, I think, we must all feel that the election of members for such enormous districts as form the constituencies of the Upper House has become a great practical inconvenience. I say this from personal experience, having long taken an active interest in the electoral contests in Upper Canada. We have found greater difficulty in inducing candidates to offer for seats in the Upper House, than in getting ten times the number for the Lower House. The constituencies are so vast, that it is difficult to find gentlemen who have the will to incur the labour of such a contest, who are sufficiently known and popular enough throughout districts so wide, and who have money enough to pay the enormous bills, not incurred in any corrupt way,—do not fancy that I mean that for a moment—but the bills that are sent in after the contest is over, and which the candidates are compelled to pay if they ever hope to present themselves for re-election. But honourable gentlemen say—"This is all very well, but you are taking an important power out of the hands of the people, which they now possess." Now this is a mistake. We do not propose to do anything of the sort. What we propose is, that the Upper House shall be appointed from the best men of the country by those holding the confidence of the representatives of the people in this Chamber. It is proposed that the Government of the day, which only lives by the approval of this Chamber, shall make the appointments, and be responsible to the people for the selections they shall make. Not a single appointment could be made, with regard to which the Government would not be open to censure, and which the representatives of the people, in this House, would not have an opportunity of condemning. For myself, I have maintained the appointed principle, as in opposition to the elective, ever since I came into public life, and have never hesitated, when before the people, to state my opinions in the broadest manner; and yet not in a single instance have I ever found a constituency in Upper Canada, or a public meeting declaring its disapproval of appointment by the Crown and its desire for election by the people at large.

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But, Mr. *Speaker*, the second feature of this scheme as a remedial measure is, that it removes, to a large extent, the injustice of which Upper Canada has complained in financial matters. We in Upper Canada have complained that though we paid into the public treasury more than three-fourths of the whole revenue, we had less control over the system of taxation and the expenditure of the public moneys than the people of Lower Canada. Well, sir, the scheme in your hand remedies that. The absurd line of separation between the provinces is swept away for general matters; we are to have seventeen additional members in the house that holds the purse; and the tax-payers of the country, wherever they reside, will have their just share of influence over revenue and expenditure. We have also complained that immense sums of public money have been systematically taken from the public chest for local purposes of Lower Canada, in which the people of Upper Canada had no interest whatever, though compelled to contribute

three-fourths of the cash. Well, sir, this scheme remedies that. All local matters are to be banished from the General Legislature; local governments are to have control over local affairs, and if our friends in Lower Canada choose to be extravagant, they will have to bear the burden of it themselves. No longer shall we have to complain that one section pays the cash while the other spends it; hereafter, they who pay will spend, and they who spend more than they ought will have to bear the brunt. It was a great thing to accomplish this, if we had accomplished nothing more,—for if we look back on our doings of the last fifteen years, I think it will be acknowledged that the greatest jobs perpetrated were of a local character —that our fiercest contests were about local matters that stirred up sectional jealousies and indignation to its deepest depth. We have further complained that if a sum was properly demanded for some legitimate local purpose in one section, an equivalent sum had to be appropriated to the other as an offset,—thereby entailing prodigal expenditure, and unnecessarily increasing the public debt. Well, sir, this scheme puts an end to that. Each province is to determine for itself its own wants, and to find the money to meet them from its own resources. But, sir, I am told that though true it is that local matters are to be separated and the burden of local expenditure placed upon local shoulders, we have made an exception from that principle in providing that a subsidy of eighty cents per head shall be taken from the federal chest and granted to the local governments for local purposes. Undoubtedly this is the fact—and I do not hesitate to admit that it would have been better if this had been otherwise. I trust I commit no breach of discretion in stating that in Conference I was one of the strongest advocates for defraying the whole of the local expenditures of the local governments by means of direct taxation, and that there were liberal men in all sections of the provinces who would gladly have had it so arranged. But, Mr. *Speaker*, there was one difficulty in the way—a difficulty which has often been encountered in this world—and that difficulty was simply this, it could not be done. We could neither have carried it in Conference nor yet in any one of the existing provincial legislatures. Our friends in Lower Canada, I am afraid, have a constitutional disinclination to direct taxation, and it was obvious that if the Confederation scheme had had attached to it a provision for the imposition of such a system of taxation, my honourable friends opposite would have had a much better chance of success in blowing the bellows of agitation than they now have. The objection, moreover, was not confined to Lower Canada—all the Lower Provinces stood in exactly the same position. They have not a municipal system such as we have, discharging many of the functions of government; but their General Government performs all the duties which in Upper Canada devolve upon our municipal councils, as well as upon Parliament. If then the Lower Provinces had been asked to maintain their customs duties for federal purposes, and to impose on themselves by the same act direct taxation for all their local purposes, the chances of carrying the scheme of union would have been greatly lessened. But I apprehend that if we did not succeed in putting this matter on the footing that would have been the best, at least we did the next best thing. Two courses were open to us—either to surrender to the local governments some source of indirect revenue, some tax which the General Government proposed to retain,—or collect the money by the federal machinery, and distribute it to the local governments for local purposes . . . But, Mr. *Speaker*, there is another great evil in our existing system that this scheme remedies; it secures to the people of each province full control over the administration of their own internal affairs. We in Upper Canada have complained that the minority of our representatives, the party defeated at the polls of Upper Canada, have been, year after year, kept in office by Lower Canada votes, and that all the local patronage of our section has been dispensed by those who did not possess the confidence of the people. Well, sir, this scheme remedies that. The local patronage will be under local control, and the wishes of the majority in each section will be carried out in all local matters. We have complained that the land system was not according to the views of our western people; that free lands for actual settlers was the right policy for us—that the price of a piece of land squeezed out of an immigrant was no consideration in comparison with the settlement among us of a hardy and industrious family; and that the colonization road system was far from satisfactory. Well, sir, this scheme remedies that. Each province is to have control of its own crown lands, crown timber and crown minerals,—and will be free to take such steps for developing them as each deems best. We have complained

that local works of various kinds,—roads, bridges and landing piers, court houses, gaols and other structures—have been erected in an inequitable and improvident manner. Well, sir, this scheme remedies that; all local works are to be constructed by the localities and defrayed from local funds. And so on through the whole extensive details of internal local administration will this reform extend. The people of Upper Canada will have the entire control of their local matters, and will no longer have to betake themselves to Quebec for leave to open a road, to select a county town, or appoint a coroner. But I am told that to this general principle of placing all local matters under local control, an exception has been made in regard to the common schools. The clause complained of is as follows:—

6. *Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their Denominational Schools at the time when the Union goes into operation.*

Now, I need hardly remind the House that I have always opposed and continue to oppose the system of sectarian education, as far as the public chest is concerned. I have never had any hesitation on that point. I have never been able to see why all the people of the province, to whatever sect they may belong, should not send their children to the same common schools to receive the ordinary branches of instruction. I regard the parent and the pastor as the best religious instructors—and so long as the religious faith of the children is uninterfered with, and ample opportunity afforded to the clergy to give religious instruction to the children of their flocks, I cannot conceive any sound objection to mixed schools. But while in the Conference and elsewhere I have always maintained this view, and always given my vote against sectarian public schools, I am bound to admit, as I have always admitted, that the sectarian system, carried to the limited extent it has yet been in Upper Canada, and confined as it chiefly is to cities and towns, has not been a very great practical injury. The real cause of alarm was that the admission of the sectarian principle was there, and that at any moment it might be extended to such a degree as to split up our school system altogether. There are but a hundred separate schools in Upper Canada, out of some four thousand, and all Roman Catholic. But if the Roman Catholics are entitled to separate schools and to go on extending their operations, so are the members of the Church of England, the Presbyterians, the Methodists, and all other sects. No candid Roman Catholic will deny this for a moment; and there lay the great danger to our educational fabric, that the separate system might gradually extend itself until the whole country was studded with nurseries of sectarianism, most hurtful to the best interests of the province, and entailing an enormous expense to sustain the hosts of teachers that so prodigal a system of public instruction must inevitably entail. Now it is known to every honourable member of this House that an Act was passed in 1863, as a final settlement of this sectarian controversy. I was not in Quebec at the time, but if I had been here I would have voted against that bill, because it extended the facilities for establishing separate schools. It had, however, this good feature, that it was accepted by the Roman Catholic authorities, and carried through Parliament as a final compromise of the question in Upper Canada. When, therefore, it was proposed that a provision should be inserted in the Confederation scheme to bind that compact of 1863 and declare it a final settlement, so that we should not be compelled, as we have been since 1849, to stand constantly to our arms, awaiting fresh attacks upon our common school system, the proposition seemed to me one that was not rashly to be rejected. I admit that, from my point of view, this is a blot on the scheme before the House, it is, confessedly, one of the concessions from our side that had to be made to secure this great measure of reform. But assuredly, I, for one, have not the slightest hesitation in accepting it as a necessary condition of the scheme of union, and doubly acceptable must it be in the eyes of honourable gentlemen opposite, who were the authors of the bill of 1863. But it was urged that though this arrangement might perhaps be fair as regards Upper Canada, it was not so as regards Lower Canada, for there were matters of which the British population have long complained, and some amendments to the existing School Act were required to secure them equal justice. Well, when this point was raised, gentlemen of all parties in Lower Canada at once expressed themselves prepared to treat it in a frank and conciliatory manner, with a view to removing any injustice that might be shown to exist; and on this understanding the educational clause was adopted by the Conference.

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Viewed then, Mr. *Speaker*, from a merely Canadian standpoint —viewed solely as a remedial measure—I fearlessly assert that the scheme in your hands is a just and satisfactory remedy for the evils and injustice that have so long distracted the province—and so strongly do I feel this, that were every word of objection urged against our union with the Maritime Provinces just and true to the very letter, I would not hesitate to adopt the union as the price of a measure of constitutional reform in Canada, so just and so complete as now proposed. But, Mr. *Speaker*, so far from the objections urged against the union with the Maritime Provinces being sound, so far from union with them being a drawback to this measure, I regard it as the crowning advantage of the whole scheme. Sir, I make no pretension to having been in past years an advocate of the immediate union of the British American Colonies. I always felt and always said that no statesman could doubt that such was the best and almost the certain future destiny of these colonies; but I doubted greatly whether the right time for the movement had yet arrived. I knew little of the Maritime Provinces or the feelings of their people; the negotiations for a union were likely to be difficult and long protracted, and I was unwilling to accept the hope of a measure so remote and so uncertain in lieu of the practical remedy for practical evils in Canada which we were earnestly seeking to obtain, and which our own Legislature had the power immediately to grant. But of late, sir, all this has been changed. The circumstances are entirely altered. A revolution has occurred in Great Britain on the subject of colonial relations to the parent state—the Government of the United States has become a great war-like power—our commercial relations with the republic are seriously threatened —and every man in British America has now placed before him for solution the practical question, what shall be done in view of the changed relations on which we are about to enter? Shall we continue to struggle along as isolated communities, or shall we unite cordially together to extend our commerce, to develope the resources of our country and to defend our soil? But more than this—many of us have learned, since we last met here, far more of the Maritime Provinces than we ever did before. We have visited the Maritime Provinces—we have seen the country—we have met the people and marked their intelligence and their industry and their frugality—we have investigated their public affairs and found them satisfactory—we have discussed terms of union with their statesmen and found that no insuperable obstacle to union exists, and no necessity for long delay. We come to the consideration of the question to-day in a totally different position from what we ever did before—and if the House will grant me its indulgence, I think I can present unanswerable arguments to show that this union of all British America should be heartily and promptly accepted by all the provinces. Mr. *Speaker*, I am in favour of a union of the British American Colonies, first, because it will raise us from the attitude of a number of inconsiderable colonies into a great and powerful people.

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When recently in England, I was charged to negotiate with the Imperial Government for the opening up of the North-West territories. In a few days the papers will be laid before the House, and it will then be seen whether or not this Government is in earnest in that matter. Sir, the gentlemen who formed the Conference at Quebec did not enter upon their work with the miserable idea of getting the advantage of each other, but with a due sense of the greatness of the work they had on hand, with an earnest desire to do justice to all, and keeping always in mind that what would benefit one section in such a union must necessarily benefit the whole. It has always appeared to me that the opening up of the North-West ought to be one of the most cherished projects of my honourable friends from Lower Canada. During the discussion on the question for some years back I had occasion to dip deep in North-West lore—into those singularly interesting narratives of life and travels in the North-West in the olden time, and into the history of the struggles for commercial dominance in the great fur-bearing regions—and it has always struck me that the French-Canadian people have cause to look back with pride to the bold and successful part they played in the adventures of those days. Nothing perhaps has tended more to create their present national character than the vigorous habits, the power of endurance, the aptitude for out-door life, acquired in their prosecution of the North-West fur trade. Well may they look forward with anxiety to the realization of this part of our scheme, in confident hope that the great north-western traffic shall once more be opened up to the hardy French Canadian traders and *voyageurs*. Last

year furs to the value of £280,000 stg. ($1,400,000) were carried from that territory by the Hudson's Bay Company—smuggled off through the ice-bound regions of James' Bay, that the pretence of the barrenness of the country and the difficulty of conveying merchandise by the natural route of the St. Lawrence may be kept up a little longer. Sir, the carrying of merchandise into that country, and bringing down the bales of pelts ought to be ours, and must ere long be ours, as in the days of yore, and when the fertile plains of that great Saskatchewan territory are opened up for settlement and cultivation, I am confident that it will not only add immensely to our annual agricultural products, but bring us sources of mineral and other wealth on which at present we do not reckon. While speaking on this question of immigration, I would remind the House, and it is impossible to urge it too strongly, that these provinces are now presented to the world in a very disadvantageous aspect, as different communities. When a party in Europe thinks of emigrating here, he has to ascertain separately all about New Brunswick, and Prince Edward Island, and Nova Scotia, and Upper and Lower Canada; and if by chance he meets a party from some one of these provinces, he has to listen to a picture of the merits of that one section in high contrast to the demerits of all the rest, and the result is the poor man's ideas about us become a mass of confusion. On the other hand, if he seeks to know the inducements for emigration to New South Wales, or New Zealand, he gets it in one picture—in an official form —and the offer is made to pay his passage to these lands of hope. A large amount of emigration, and of money which the emigrant takes with him, are thus carried off to a much more distant land than this, and one that does not offer equal inducements to the settler. But how different will all this be when these provinces stand united, and present to emigrants a combination of so many branches of profitable industry? . . . In one single day the *Taché-Macdonald* Administration, by taking up the constitutional question boldly, turned their minority of two into a majority of seventy. Could anything prove more unanswerably than this the deep hold this question has on the public mind, and the assured confidence of the members of this House that their constituents understand its whole merits, when, in one day, such a startling political revolution was brought about? Was it, think you, a doubtful consideration that could have induced the Upper Canada Opposition, almost as one man, to cast down their party intrenchments and make common cause with their opponents? Could there have been the slightest doubt as to the sentiments of our people and the imperative necessity of immediate action, when such men as now sit on the treasury benches, were forced, by their supporters, to unite for the settlement of this question? And could there be a more conclusive proof of the ripeness of public opinion than the unanimous and cordial manner in which our so uniting has been sustained by the press of all parties, and by the electors at the polls? Never, I venture to assert, was any great measure so thoroughly understood, and so cordially endorsed by the people of Canada, as this measure now under consideration. The British Government approves of it—the Legislative Council approves of it—this House almost unanimously approves of it—the press of all parties approves of it—and though the scheme has already been directly submitted to fifty out of the one hundred constituencies into which Canada is divided, only four candidates ventured to appear at the hustings in opposition to it—all of them in Lower Canada—and but two of them were elected. And yet, sir, we are to be told that we are stealing a march upon the country; that it is not understood by the people; and that we must dissolve the House upon it, at a vast cost to the exchequer, and at the risk of allowing political partisanship to dash the fruit from our hands at the very moment we are about to grasp it! Sir, I have no fears whatever of an appeal to the people. I cannot pretend to speak as to the popular feeling in Lower Canada, but I think I thoroughly understand the popular mind of the western province, and I hesitate not to say that there are not five gentlemen in this chamber (if so many) who could go before their constituents in Upper Canada in opposition to this scheme, with the slightest chance of being returned. It is because I thoroughly comprehend the feelings of the people upon it, that I urge the adoption of this measure at the earliest possible moment. The most gross injustice is to be rectified by it; the taxpayer is to be clothed with his rightful influence by it; new commercial relations are to be opened up by it; a new impulse to the industrial pursuits of the country will be given by it—and I for one would feel myself false to the cause I have so long sustained, and false to the best interests of my constituents, if I permitted one hour unnecessarily to pass without bringing it to a final issue.

It was only by the concurrence of most propitious circumstances that the wonderful progress this movement has made could have been accomplished. Most peculiar were the circumstances that enabled such a coalition to be formed as that now existing for the settlement of this question—and who shall say at what hour it may not be rent asunder? And yet, who will venture to affirm that if party spirit in all its fierceness were once more to be let loose amongst us, there would be the slightest hope that this great question could be approached with that candour and harmony necessary to its satisfactory solution? Then, sir, at the very moment we resolved to deal with this question of constitutional change, the Maritime Provinces were about to assemble in joint conference to consider whether they ought not to form a union among themselves—and the way was thus most propitiously opened up for the consideration of a union of all British America. The civil war too, in the neighbouring republic; the possibility of war between Great Britain and the United States; the threatened repeal of the Reciprocity Treaty; the threatened abolition of the American bonding system for goods *in transitu* to and from these provinces; the unsettled position of the Hudson's Bay Company; and the changed feeling of England as to the relations of great colonies to the parent state;—all combine at this moment to arrest earnest attention to the gravity of the situation, and unite us all in one vigorous effort to meet the emergency like men. The interests to be affected by this scheme of union are very large and varied—but the pressure of circumstances upon all the colonies is so serious at this moment, that if we cannot now banish partisanship and sectionalism and petty objections, and look at the matter on its broad intrinsic merits, what hope is there of our ever being able to do so? An appeal to the people of Canada on this measure simply means postponement of the question for a year—and who can tell how changed ere then may be the circumstances surrounding us? Sir, the man who strives for the postponement of this measure on any ground, is doing what he can to kill it almost as effectually as if he voted against it. Let there be no mistake as to the manner in which the Government presents this measure to the House. We do not present it as free from fault, but we do present it as a measure so advantageous to the people of Canada, that all blemishes, real or imaginary, averred against it, sink into utter insignificance in presence of its merits. We present it, not in the precise shape we in Canada would desire it, but as in the best shape the five colonies to be united could agree upon it. We present it in the form in which the five governments have severally adopted it—in the form the Imperial Government has endorsed it —and in the form in which we believe all the legislatures of the provinces will accept it. We ask the House to pass it in the exact form in which we have presented it, for we know not how alterations may affect its safety in other places, and the process of alteration once commenced in four different legislatures—who can tell where that would end? Every member of this House is free as the air to criticise it if he so wills, and amend it if he is able—but we warn him of the danger of amendment, and throw on him all the responsibility of the consequences. We feel confident of carrying this scheme as it stands—but we cannot tell what we can do if it be amended. Let not honourable gentlemen approach this measure as a sharp critic deals with an abstract question, striving to point out blemishes and display his ingenuity; but let us approach it as men having but one consideration before us—the establishment of the future peace and prosperity of our country. Let us look at it in the light of a few months back—in the light of the evils and injustice to which it applies a remedy—in the light of the years of discord and strife we have spent in seeking for that remedy—in the light with which the people of Canada would regard this measure were it to be lost, and all the evils of past years to be brought back upon us again. Let honourable gentlemen look at the question in this view—and what one of them will take the responsibility of casting his vote against the measure? Sir, the future destiny of these great provinces may be affected by the decision we are about to give to an extent which at this moment we may be unable to estimate—but assuredly the welfare for many years of four millions of people hangs on our decision. Shall we then rise equal to the occasion?—shall we approach this discussion without partisanship, and free from every personal feeling but the earnest resolution to discharge conscientiously the duty which an over-ruling providence has placed upon us? Sir, it may be that some among us will live to see the day when, as the result of this measure, a great and powerful people may have grown up in these lands—when the boundless forests all around us shall have given way to smiling fields

and thriving towns—and when one united Government, under the British flag, shall extend from shore to shore:—but who would desire to see that day if he could not recall with satisfaction the part he took in this discussion? Mr. *Speaker* I have done. I leave the subject to the conscientious judgment of the House, in the confident expectation and belief that the decision it will render will be worthy of the Parliament of Canada.

Thursday, *February* 16, 1865.

*Hon. Mr. Dorion*,[1] in resuming the adjourned debate on Confederation, said—I should have desired to make my remarks to the House in French, but considering the large number of honourable members who are not familiar with that language, I think it my duty to speak at the present time in English. In rising on this occasion to address the House on the important question submitted to us, I must say I do so with an unusual degree of embarrassment, not only on account of the importance of the subject of our deliberations, but also because I have to differ from many of those with whom I have been in the habit of acting ever since I first entered into political life. Yet, Mr. *Speaker*, when I consider the questions raised by the resolutions submitted by the Government, I find that whether they be purely political ones, such as the proposal to restrict the influence and control of the people over the Legislature of the country by substituting a Chamber nominated by the Crown for an Elective Legislative Council, or whether they are purely commercial in their character, such as that regarding the Intercolonial Railway, or the larger question of Confederation itself, I still hold the same views that I held, in common with others who have now changed their opinions, when the subjects were first mooted. And as I have not heard, since the first opening of this debate, any reason for substituting a nominated for an elective Upper Chamber that was not fully argued out in 1856, when, by an overwhelming majority of this House, it was decided that the elective principle should prevail—as I have not heard any reason why we should pledge our credit and resources to the construction of the Intercolonial Railway, even previous to any estimate of its cost being made, that was not urged in 1862 when the question was before the country—nor any reason for intercolonial union that was not raised in 1858, when the present Hon. Finance Minister pressed the question on the attention of the Imperial authorities—I do not see on what ground these several subjects which were then so unpopular, and those views which were then almost universally repudiated, should now be more favourably considered by the people of this country—I fail to perceive why those once unpalatable measures, now coupled with additions to the burdens of the people, should have grown into public favor. I cannot understand why I or any members of this House should change our views merely because certain other members have, when we do not conscientiously think such change would be for the benefit of the country. I say, sir, that I am quite entitled to maintain the same views now that I have always entertained. This scheme, sir, is submitted to us on two grounds; first, the necessity for meeting the constitutional difficulties which have arisen between Upper and Lower Canada owing to the growing demands on the part of Upper Canada for representation by population; and, secondly, the necessity for providing more efficient means for the defence of the country than now exist. These are the only two grounds we have heard stated for the propositions now submitted to us; and, sir, I shall apply myself to explain my views on these two subjects, and also upon the scheme generally. When on the first question, I trust I shall be permitted to go a little into the history of the agitation of representation by population, for I owe it to myself, to my constituents and the country. My name has been used in various ways. It has sometimes been said that I was entirely favourable to representation by population—at other times that I was entirely favourable to the Confederation of the provinces, and I will now endeavour, once more, to state as clearly as possible what my real views have been and still are. The first time representation by population was mooted in this House, on behalf of Upper Canada, was, I believe, in the Session of 1852, when the Conservative party took it up, and the Hon. Sir *Allan Macnab* moved resolutions in favor of the principle. We then found the conservatives arrayed in support of this constitutional change. It had been mooted before on behalf of Lower Canada, but the Upper Canadians had all opposed it. I think two votes were taken in 1852, and on one of these occasions the Hon. Attorney General West (Hon. J. A. *Macdonald*) voted for it; it came up

[1] A. A. Dorion, member for Hochelaga.

incidentally. In 1854, the *Macnab-Morin* coalition took place, and we heard no more of representation by population from that quarter—that is, as mooted by the Conservative party, who from that moment uniformly opposed it on every occasion. It was, however, taken up by the present Hon. President of the Council, the member for South Oxford, and with the energy and vigour he brings to bear on every question he takes in hand, he caused such an agitation in its behalf as almost threatened a revolution. As the agitation in the country increased, so did the vote for it in this House increase, and on several occasions I expressed my views upon the subject. I never shirked the question—I never hesitated to say that something ought to be done to meet the just claims of Upper Canada, and that representation based on population was in the abstract a just and correct principle. I held, at the same time, there were reasons why Lower Canada could not grant it; I entreated Lower Canadian representatives to show themselves disposed to meet the views of Upper Canada by making, at any rate, a counter proposition; and in 1856, when Parliament was sitting in Toronto, I, for the first time, suggested that one means of getting over the difficulty would be to substitute for the present Legislative union a Confederation of the two Canadas, by means of which all local questions could be consigned to the deliberation of local legislatures, with a central government having control of commercial and other questions of common or general interest. I stated, that, considering the different religious faith, the different language, the different laws that prevailed in the two sections of the country, this was the best way to meet the difficulty; to leave to a general government questions of trade, currency, banking, public works of a general character, etc., and to commit to the decision of local legislatures all matters of a local bearing. At the same time I stated that, if these views should not prevail, I would certainly go for representation by population, and such checks and guarantees as would secure the interests of each section of the country, and preserve to Lower Canada its cherished institutions. This speech, sir, has been twisted in all sorts of ways. I have heard it quoted to prove that I was in favour of representation by population, pure and simple; that I was in favour of a Confederation of the provinces and for several other purposes, just as it suited the occasion or the purpose of those who quoted it. The first time the matter was put to a practical test was in 1858. On the resignation of the *Macdonald-Cartier* Administration, the *Brown-Dorion* Government was formed, and one of the agreements made between its members was that the constitutional question should be taken up and settled, either by a Confederation of the two provinces or by representation according to population, with such checks and guarantees as would secure the religious faith, the laws, the language, and the peculiar institutions of each section of the country from encroachments on the part of the other. The subject came up again in the latter part of 1850 [1] when the Toronto Convention took place. I should, however, first say that, when the *Brown-Dorion* Administration was formed, the Hon. the President of the Council urged very strongly that representation by population should be taken up as the method by which to settle the constitutional question; while, on the contrary, I saw the difficulty of so taking it up, even with such checks and guarantees as were spoken of, and made the counter-proposition that a Confederation of the two provinces should be formed. Of course as our Administration was so short-lived, the subject was not discussed in all its bearings; but if we could have come to an agreement on one or the other mode, that one would have been submitted as the solution for the evils complained of—it being however distinctly understood that I would not attempt to carry any such measure through without obtaining for it a majority from Lower Canada. I would never have tried to make any change in the Constitution without ascertaining that the people in my own section of the province were in favour of such a change. To return to the Toronto Convention. I was invited to attend it, but though I was unable to do so, certain communications took place, and a meeting of the liberal members of the House from Lower Canada was held, and a document issued, signed by the present Minister of Agriculture (Hon. Mr. *McGee* [2]), Hon. Mr. *Dessaulles*, Hon. Mr. *Drummond*, and myself. The document was given to the public for the purpose of setting forth the views which we held as to the settlement of the difficulty. Pretended extracts have been given from that document, as from my

[1] An error for '1859'.

[2] Hon. T. D'Arcy McGee, member for Montreal West. (See Isabel Skelton, *The Life of Thomas D'Arcy McGee* (Gardenvale, 1925); Alexander Brady, *D'Arcy McGee* (Toronto, 1925).

speech, to attempt to prove all sorts of things as being my views, but I can show most clearly that the proposition made in it was just that which had been made in 1858, viz., the Confederation of the two provinces, with some joint authority for both. Both at that time and at the time of the formation of the *Brown-Dorion* Administration, various suggestions were made as to the carrying out of the plan of confederating the two Canadas. Some thought that two entirely distinct legislatures should be formed; one local for Lower Canada, another local for Upper Canada, with a general legislature acting for both. Others suggested the idea that the same legislature might fulfil all purposes; that the same body might meet and deliberate on questions of common interest, and that the members for each section might then separate and discuss all matters of a sectional character. Others, again, said the same result might be obtained by having but one legislature, and insisting that no laws affecting either section of the province should be carried, unless with the support of a majority from the section affected by them. These three plans were suggested—the first to have two entirely distinct legislative bodies, one for general purposes, others for local ones; the second, to have one legislature, of which the parts should have the right to act separately for local objects, after general business had been disposed of; the third, to have but one body, but to resolve that no legislative act of a local nature should pass without the consent of a majority of the representatives from that locality. The document to which I have just referred, issued in October, 1859, contained this language on the subject:—

*Your Committee are impressed with the conviction that whether we consider the present needs or the probable future condition of the country, the true, the statesmanlike solution is to be sought in the substitution of a purely federative for the present legislative union; the former, it is believed, would enable us to escape all the evils, and to retain all the advantages, appertaining to the existing union.*

* * * * * *

*The proposition to federalize the Canadian union is not new. On the contrary, it has been frequently mooted in Parliament and the press during the last few years. It was no doubt suggested by the example of the neighbouring States where the admirable adaptation of the federal system to the government of an extensive territory, inhabited by people of divers origins, creeds, laws and customs, has been amply demonstrated; but shape and consistency were first imparted to it in* 1856, *when it was formally submitted to Parliament by the Lower Canada Opposition, as offering, in their judgment, the true corrective of the abuses generated under the present system.*

The document further went on to say:—

*The powers delegated to the General or Federal Government ought to be those only which are essential for the ends of the Confederation and consequently we ought to reserve for the subdivisions as ample powers as possible. Customs, finance, laws regulating the currency, patent rights, Crown lands and those public works which are of common interest for all parts of the province, ought to be the principal, if not the only subject submitted to the control of the Federal Government, while all that belongs to matters of a purely local character, such as education, the administration of justice, the militia, the laws relating to property, police, etc., ought to be referred to the local governments, whose powers ought generally to extend to all subjects which would not be given to the General Government. The system thus proposed would in no way diminish the importance of the colony nor impair its credit—*

*Hon. Atty. Gen. Macdonald*—From what document is my hon. friend reading?

*Hon. Mr. Dorion*—I am translating from the document published by the Lower Canada liberals in 1859. It continues:—

*The proposed system would in no way diminish the importance of the colony, or impair the credit, while it presents the advantage of being susceptible, without any disturbance of the federal economy, of such territorial extention as circumstances may hereafter render desirable.*

Well, Sir, I have not a word of all this to take back. I still hold to the same views, the same opinions. I still think that a Federal union of Canada might hereafter extend so as to embrace other territories either west or east; that such a system is well adapted to admit of territorial expansion without any disturbance of the federal economy, but I cannot understand how this plain sentence should be considered by the Hon. President of the Council, or by other hon. members who have spoken in the other House, as any indication that I have ever been in favour of Confederation with the other British Provinces. There is nothing I have ever said or written that can be construed to mean that I was ever in favour of

such a proposition. On the contrary, whenever the question came up I set my face against it. I asserted that such a confederation could only bring trouble and embarrassment, that there was no social, no commercial connection between the provinces proposed to be united—nothing to justify their union at the present juncture. Of course I do not say that I shall be opposed to their Confederation for all time to come. Population may extend over the wilderness that now lies between the Maritime Provinces and ourselves, and commercial intercourse may increase sufficiently to render Confederation desirable. My speeches have been paraded of late in all the ministerial papers—misconstrued, mistranslated, falsified in every way—for the purpose of making the public believe that in former times I held different views from those I now do. A French paper has said that I called with all my heart for Confederation of the provinces—(*que j'appelais de tous mes vœux la confédération des provinces*). But I say here, as I said in 1856, and as I said in 1861 also, that I am opposed to this Confederation now. In the *Mirror of Parliament* which contains a report, though a very bad one, of my speech in 1861, I find that I said on that occasion:—

*The time may come when it will be necessary to have a Confederation of all the provinces; . . . but the present time is not for such a scheme.* This is the speech which has been held to signify that I was anxious for Confederation, that I should like nothing better. Why? I distinctly said that though the time might come when it would be necessary, it was not desirable under existing circumstances. In 1862, I was not in Parliament, the *Cartier-Macdonald* Administration was dismissed, and my hon. friend, the member for Cornwall (Hon. John S. *Macdonald*), was called upon to form a new one. He applied to Mr. *Sicotte* to form the Lower Canada section while he himself undertook the formation of the Upper Canada portion. The question of representation by population then necessarily came up for settlement—this time at the hands of the Liberal party who had voted for it year after year—and when I came down to Quebec, summoned by telegraph, I found the arrangements made, the policy of the new government was settled, representation by population was excluded. The Liberal party from Upper Canada, sir, to my surprise, had decided that it was not to be taken up—that they were going into office just as the Conservative party had done before on a similar occasion in 1854; they decided that they would sustain an Administration which made it a closed question, and whose members all pledged themselves to vote against it.

*Mr. Rankin* [1]—No, no.

*Hon. Mr. Dorion*—If not, I was certainly misinformed. I certainly understood that the Administration was formed on the understanding that every member of it should vote against the question of representation by population whenever it came up, and that the Upper Canada party would support the Administration so formed. At any rate the Upper Canada Liberal party supported, for eleven months, a government pledged to exclude representation by population from the category of open questions, and agreed to lay that question aside.

*Mr. McKenzie* (Lambton)—No, no.

*Hon. Mr. Dorion*—I hear an honourable gentleman say it was not so, that he did not agree to lay aside representation by population then, but if he did not then has he not done so since? He declared at a public meeting the other day that representation by population was no cure for the evils afflicting Upper Canada. The members from Upper Canada who had joined the *Macdonald-Sicotte* Government had certainly abandoned representation by population, by entering into an Administration which bound every one of them to vote against it. The Hon. Provincial Secretary had stated publicly in Ottawa, in January, 1864, that it had been abondoned by the Liberal party at the Toronto Convention in 1859; and although he had at the time been soundly abused for this by the *Globe* and by those of his party who look to the *Globe* as their political gospel, he had now the satisfaction of seeing the hon. member for Lambton, and some others who formerly held very strong views on this question, acknowledge, as they had done at a public meeting held at Toronto about three weeks ago, that they also considered representation by population as applied to Canada no remedy for the Upper Province, and that it was not a measure the liberals ought to insist upon, and that it had been abandoned. Yes, the question was in effect abandoned when in November, 1859, six hundred delegates from all parts of Upper Canada attended the Reform Convention at Toronto and agreed to advocate a Confederation of the two Canadas, by giving to each province a local legislature, with some joint

[1] Arthur Rankin, Member for Essex.

authority, to carry on the general business common to both. The hon. member on my left was present on the occasion—

*Hon. Mr. Holton*[1]—Yes, I was.

*Hon. Mr. Dorion*—And the hon. member has told me that he never saw a more respectable, a more educated, or more intelligent assemblage brought together in such numbers to discuss public questions. But that scheme did not attract much attention out of the Convention. It took no hold on the popular mind. Shortly before that, in 1858, the present Hon. Finance Minister, who then sat on the cross-benches, made a speech of two or three hours' duration, in which, with all that force and ability for which he is distinguished, he expounded and advocated the Confederation of the whole of the British North American Provinces. He was then assisted in its advocacy by the present Hon. Minister of Agriculture; and, subsequently, on becoming a member of the *Cartier-Macdonald* Administration, he went to England and drew the attention of the Imperial authorities to the scheme of Confederation of all those provinces. The Hon. Finance Minister received an answer not very encouraging; and that which he received from this country was still less encouraging. There was not even an answer to his speech, able though it certainly was—

*Hon. Mr. Holton*—He never ventured to propose any resolution to Parliament.

*Hon. Mr. Dorion*—Though the Administration was formed with the understanding of effecting the Confederation of all the provinces, and it was the main plank of their platform, they never dared to submit the question to Parliament at all. Subsequently, in 1861, the hon. member for South Oxford brought forward a motion based on the resolution at the Toronto Convention. I spoke and voted for it. It was in perfect accord with a notice I had given in 1856, and which was read here by the Hon. President of the Council a few nights ago, and with my often-repeated declarations that I was willing to adopt some measure calculated to remove existing difficulties without doing injustice to either section; but while I was willing to do justice to Upper Canada, I always declared that I would not do so by sacrificing the interests of Lower Canada, or placing her in the position of having to beg for justice at the hands of the sister province. I always stated that the difference existing in the religious faith of the people of the two sections, in their language, in their laws, in their prejudices even—for there are prejudices which were respectable and ought to be respected—would prevent any member from Lower Canada, representing a French constituency, from voting for representation by population, pure and simple, and thereby placing the people of Lower Canada in the position of having to trust for the protection of their rights to the people of Upper Canada, who would thereby have the majority in the Legislature. There is at this moment a movement on the part of the British Protestants in Lower Canada to have some protection and guarantee for their educational establishments in this province put into the scheme of Confederation, should it be adopted; and far from finding fault with them, I respect them the more for their energy in seeking protection for their separate interests. I know that majorities are naturally aggressive and how the possession of power engenders despotism, and I can understand how a majority, animated this moment by the best feelings, might in six or nine months be willing to abuse its power and trample on the rights of the minority, while acting in good faith, and on what it considered to be its right. We know also the ill feelings that might be engendered by such a course. I think it but just that the Protestant minority should be protected in its rights in everything that was dear to it as a distinct nationality, and should not lie at the discretion of the majority in this respect, and for this reason I am ready to extend to my Protestant fellow citizens in Lower Canada of British origin, the fullest justice in all things, and I wish to see their interests as a minority guaranteed and protected in every scheme which may be adopted. With these views on the question of representation, I pronounced in favour of a Confederation of the two provinces of Upper and Lower Canada, as the best means of protecting the varied interests of the two sections. But the Confederation I advocated was a real confederation, giving the largest powers to the local governments, and merely a delegated authority to the General Government—in that respect differing *in toto* from the one now proposed which gives all the powers to the Central Government, and reserves for the local governments the smallest possible amount of freedom of action. There is nothing besides in what I have ever written or said that can be interpreted as favouring a Confederation of

[1] Hon. Luther H. Holton, Member for Chateauguay.

all the provinces. This I always opposed. There is no breach of confidence in my saying that in the conversations I had with the Hon. President of the Council, previous to his accepting office, since he has referred to them himself in a speech which he made when reëlected at South Oxford, I positively declined to support any proposition for the Confederation of all the provinces. Very true, sir, I did not refuse to vote for it in committee. I did not vote at all—I was not present when the vote was taken, but I did not conceal my opposition to it. In that speech the Hon. President of the Council also said:—

*Before the negotiations were gone through with, I warned the Hon. Messrs. Holton and Dorion to take action, but they refused me. I felt all the pain of a refusal, but they left me no resource. When the question was asked me by the Government, I said I wanted six members—four from Upper and two from Lower Canada. When asked how many supporters I could bring from Lower Canada, I replied that since Hon. Mr. Dorion did not act, I could bring no supporters.*

So, sir, I have the best evidence possible to repudiate the accusation that I was in favour of Confederation of all the provinces in the fact that, before there was any question at all as to who should go into the Government, I stated—and that in the hearing of several honourable members now present—that I would have nothing to do with it because I did not conceive it would be for the interest of the country to have such a Confederation, at all events at the present time. Now, sir, I think I have shown that I neither favored representation by population pure and simple, nor a Confederation of the provinces; and when honourable gentlemen state that the necessity of settling the question of representation is the origin of this Federation scheme, they labour under a grave misapprehension. There is nothing further from the fact. The representation question was almost altogether abandoned—was played out; there was no agitation about it, and certainly less then there had been for the last ten years. The honourable member for South Oxford, after advocating the views of the Toronto Convention, still persisted in advocating representation by population, but so changed was the feeling that he could hardly get a debate on the motion he made last session for a committee to consider the constitutional difficulties. There was then another cause for this Confederation scheme of which representation by population was made the pretext. It is not so well known, but far more powerful. In the year 1861, Mr. *Watkin* was sent from England by the Grand Trunk Railway Company. He came with the distinct view of making a large claim on the country for aid, but in the then temper of the people, he soon found that he could not expect to obtain that. Thinking that if he only could put some new scheme afloat which would give a decent pretext to a well disposed Government, he would quietly get the assistance required, he immediately started for the Lower Provinces, and came back after inducing people there to resuscitate the question of the Intercolonial Railway. Parties were readily found to advocate it, if Canada would only pay the piper. A meeting of delegates took place, resolutions were adopted, and an application was made to the Imperial Government for a large contribution to its costs, in the shape of an indemnity for carrying the troops over the road. Mr. *Watkin* and Hon. Mr. *Vankoughnet*, who was then a member of the Government, went to England about this scheme, but the Imperial authorities were unwilling to grant the required assistance, and rejected their propositions. Mr. *Watkin*, although baffled in his expectations, did not give up his project. He returned again to Canada, and by dint of perseverence, induced my honourable friend on my right (Hon. J. S. *Macdonald*) and other honourable members of his Cabinet to enter into his views. As to the advantages of the Intercolonial Railway, I have not the slightest idea that my hon. friend had any suspicion whatsoever of the motives which animated these Grand Trunk officials, and that their object was to have another haul at the public purse for the Grand Trunk—but this was the origin of the revival of the scheme for constructing the Intercolonial Railway.

*Hon. J. S. Macdonald*—We found the project then left to us as a legacy by the *Cartier-Macdonald* Administration.

*Hon. Mr. Dorion*—So it was. The *Macdonald-Sicotte* Government found the matter so far advanced that an arrangement had been made for a meeting of delegates of the several provinces to consider again this railway scheme, the other project having failed. At this meeting of delegates, which took place in September, 1862, a new scheme for building the Intercolonial was adopted, by which Canada was to pay five-twelfths and the Lower Provinces seven-twelfths. So unpopular was this arrangement that when its terms were made known, if a vote of the

people had been taken upon it, not ten out of every hundred, from Sandwich to Gaspé, would have declared in its favour, although Canada was only to pay five-twelfths of its cost. This project having failed, some other scheme had to be concocted for bringing aid and relief to the unfortunate Grand Trunk—and the Confederation of all the British North American Provinces naturally suggested itself to the Grand Trunk officials as the surest means of bringing with it the construction of the Intercolonial Railway. Such was the origin of this Confederation scheme. The Grand Trunk people are at the bottom of it; and I find that at the last meeting of the Grand Trunk Railway Company, Mr. *Watkin* did in advance congratulate the shareholders and bondholders on the bright prospects opening before them, by the enhanced value which will be given to their shares and bonds, by the adoption of the Confederation scheme and the construction of the Intercolonial as part of the scheme. I repeat, sir, that representation by population had very little to do with bringing about this measure. The *Taché-Macdonald* Government were defeated because the House condemned them for taking without authority $100,000 out of the public chest for the Grand Trunk Railway, at a time when there had not been a party vote on representation by population for one or two sessions. Those who had been the loudest in their advocacy of it, had let it drop. I was tracked through Lower Canada as being willing to sell Lower Canada, grant representation by population, and destroy Lower Canadian institutions. I thank God, sir, I never insulted Upper Canada, like some of those who reviled me. I never compared the people of Upper Canada to so many cod-fish. I showed on the contrary that I was always willing to meet the just claims of Upper Canada. Well, without any demand whatever for the agitation of this question, the moment the Government was defeated and there was a necessity for resigning or going before the people, these gentlemen opposite prepared to embrace their greatest opponents and said to themselves, "We will make everything smooth, we will forget past difficulties, provided we can but keep our seats."

*Hon. Atty. Gen. Macdonald*—(Ironically)—Hear, hear.

*Hon. Mr. Dorion*—I hear a voice, sir, which is well known in this House, the voice of the Attorney General West, saying "hear, hear." But what was the course of that hon. gentleman last year, when the hon. member for South Oxford had a committee appointed to whom was referred the despatch written by his three colleagues, the Minister of Finance, the Attorney General East and the Hon. Mr. Ross, who is now no longer a minister. He voted against the appointment of the committee, and, after it was named, as a member of it, he voted against the principle of Confederation.

*Hon. Atty. Gen. Macdonald*—Hear, hear.

*Hon. Mr. Dorion*—The last vote taken in that committee was about the middle of June, the very day of the crisis, and the hon. gentleman voted against the principle of Confederation of all the provinces, in accordance with the opinions he again and again expressed in this House, as being opposed to all Confederation whatever. When I state that these gentlemen only found out that Confederation was a panacea for all evils, a remedy for all ills, when their seats as ministers were in danger, I come to this conclusion quite legitimately, from facts which are well known to this House. But, sir, it would probably be of very little moment whether I was formerly in favour of Confederation or against it, or whether the Hon. Attorney General West was in favour of Confederation or opposed to it, if the scheme proposed to us were an equitable one, or one calculated to meet the wishes of the people of this country; but, as I said a minute ago, the scheme was not called for by any considerable proportion of the population. It is not laid before the House as one which was demanded by any number of the people; it is not brought down in response to any call from the people; it is a device of men who are in difficulties, for the purpose of getting out of them. The members of the *Taché-Macdonald* Government could not appeal to the country after their defeat upon the question, whether they were justified in taking $100,000 out of the public chest, in addition to the millions they had previously taken, without the consent of Parliament; so, having either to give up their seats or evade that particular issue, they abandoned all their previous opinions, and joined the hon. member for South Oxford in carrying out this Confederation scheme. I come now to another point, viz., is the scheme presented to us the same one that was promised to us by the Administration when it was formed. This, sir, might be but of slight importance if the manner in which this proposed Constitution was framed had not a most unfortunate bearing on the scheme itself; but it is a grave matter, since the scheme is so ob-

jectionable, especially as are we gravely told that it cannot be amended in the least, but that it is brought down as a compact made between the Government of this country and delegates from the governments of Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island—as a treaty which cannot be altered or amended in any particular. The plain meaning of this is, sir, that the Lower Provinces have made out a Constitution for us and we are to adopt it. This fact will appear the more clearly when it is considered, as was pointed out much to my surprise, by the hon. member for Hastings (Mr. T. C. *Wallbridge*), that in the Conference the vote was taken by provinces, putting Upper and Lower Canada, with nearly 2,500,000 people, on no higher level than Prince Edward Island, with its 80,000—on the same level with New Brunswick with its 250,000 —on the same level as Nova Scotia, with its 330,000.

*Hon. Atty. Gen. Macdonald*—That is entirely a mistake.

*Hon. Mr. Dorion*—It was admitted by the Honourable the President of the Council the other evening.

*Hon. Atty. Gen. Macdonald*—No, no.

*Hon. Mr. Dorion*—It was the champion of representation by population who made the statement. He it was that went to Prince Edward Island and asked it to frame a Constitution for this country. In order to shew, Mr. *Speaker*, that I am not mistaken in what I state, that this scheme is not the one which it was announced in the formation of this Administration was to be brought down—in order to prove, indeed, that it was then determined not to bring down such a measure,—I will cite a declaration made by members of the Government as to the negotiations which took place at its formation. I will read from the Quebec *Morning Chronicle* of June 23rd:

*The Hon. Atty. Gen. Macdonald, in explaining the negotiations, read the following memorandum,*

MEMORANDUM—CONFIDENTIAL.

*The Government are prepared to state that immediately after the prorogation, they will address themselves, in the most earnest manner to the negotiation for a Confederation of all the British North American Provinces.*

*That failing a successful issue to such negotiations, they are prepared to pledge themselves to legislation during the next Session of Parliament for the purpose of remedying the existing difficulties by introducing the Federal principle for Canada alone, coupled with such provisions as will permit the Maritime Provinces and the North Western Territory to be hereafter incorporated into the Canadian system.*

*That for the purpose of carrying on the negotiations and settling the details of the promised legislation, a Royal Commission shall be issued, composed of three members of the Government and three members of the Opposition, of whom Mr. Brown shall be one, and the Government pledge themselves to give all the influence of the Administration to secure to the said Commission the means of advancing the great object in view.*

This was the first memorandum communicated to the member for South Oxford but that hon. member did not accept of it. This memorandum proposed the scheme which is now brought to the House, and I repeat, that scheme was not accepted by the honourable member for South Oxford, but an understanding was come to, which is to be found in the next memorandum, which was communicated to the House in these terms:—

*The Government are prepared to pledge themselves to bring in a measure next session for the purpose of removing existing difficulties, by introducing the Federal principle into Canada, coupled with such provisions as will permit the Maritime Provinces and the North-West Territory to be incorporated into the same system of government.*

*And the Government will seek, by sending representatives to the Lower Provinces and to England, to secure the assent of those interests which are beyond the control of our own legislation to such a measure as will enable all British North America to be united under a General Legislature based upon the Federal system.*

There is a vast difference, Mr. *Speaker*, between these two propositions. The first was that the Government would pledge themselves to seek a Confederation of the British American Provinces, and if they failed in that to Federate the two Canadas, and this was rejected; the second, which was accepted by the President of the Council, pledged the Government to bring in a measure for the Confederation of the two Canadas, with provisions for the admission of the other provinces when they thought proper to enter.

*Hon. Atty. Gen. Macdonald*—When they were ready.

*Hon. Atty. Gen. Cartier*—Everything is accomplished.

*Hon. Mr. Dorion*—But, sir, I may be asked, granting all this, granting that the scheme brought down is not the scheme promised to us, what difference our bringing in the provinces at once can make? This I will endeavor to explain. When they went into the Conference, honourable gentlemen opposite submitted to have the votes taken by provinces. Well, they have now brought us in, as was natural under the circumstances, the most conservative measure ever laid before a Parliament. The members of the Upper House are no longer to be elected, but nominated, and nominated by whom? By a Tory or Conservative Government for Canada, by a Conservative Government in Nova Scotia, by a Conservative Government in Prince Edward Island, by a Conservative Government in Newfoundland, the only Liberal Government concerned in the nomination being that which is controlled by the Liberal party in New Brunswick, whose fate depends on the result of the elections that are now going on in that province. Such a scheme would never have been adopted if submitted to the liberal people of Upper Canada. When the Government went into that Conference they were bound by the majority, especially since they voted by provinces, and the 1,400,000 of Upper Canada with the 1,100,000 of Lower Canada—together 2,500,000 people—were overridden by 900,000 people of the Maritime Provinces. Were we not expressly told that it was the Lower Provinces who would not hear of our having an elective Legislative Council? If, instead of going into Conference with the people of the Lower Provinces, our Government had done what they pledged themselves to do, that is, to prepare a Constitution themselves, they would never have dared to bring in such a proposition as this which is now imposed upon us by the Lower Colonies—to have a Legislative Council, with a fixed number of members, nominated by four Tory governments. Why, taking the average time each councillor will be in the Council to be fifteen to twenty years, it will take a century before its complexion can be changed. For all time to come, so far as this generation and the next are concerned, you will find the Legislative Council controlled by the influence of the present Government. And is it to be believed that, as promised in the document we are considering, such a Government as we have "will take care of the Opposition, or consider their right to be represented in the Council?" Sir, I thank the delegates for their kind solicitude for the Opposition, but I do not believe they will do anything of the kind. Have we not heard the Honorable Attorney General West, a few nights ago, state, turning to his followers, "If I were to advise the nomination, I should advise the selection of the best men I could find—and of course of my own party?"

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How long will the system work without producing a collision between the two branches of the Legislature? Suppose the Lower House turns out to be chiefly Liberal, how long will it submit to the Upper House, named by Conservative administrations which have taken advantage of their temporary numerical strength to bring about such a change as is now proposed? Remember, sir, that, after all, the power, the influence of the popular branch of the Legislature is paramount. We have seen constitutions like that of England adopted in many countries, and where there existed a nobility, such as in France in 1830, the second chamber was selected from this nobility. In Belgium, where the Constitution is almost a *facsimile* of that of England, but where there are no aristocracy, they adopted the elective principle for the Upper House, and no where in the world is there a fixed number for it, unless it is also elective. It must be fresh in the memory of a great many members of this House how long the House of Lords resisted the popular demand for reform, and great difficulties were threatened. At last in 1832, the agitation had become so great that the Government determined to nominate a sufficient number of peers to secure the passage of the Reform Bill. The members of the House had to choose between allowing the measure to become law, or see their influence destroyed by the addition of an indefinite number of members. They preferred the first alternative, and thereby quieted an excitement, which if not checked in time might have created a revolution in England. The influence of the Crown was then exerted in accordance with the views of the people; but here we are to have no such power existing to check the action of our Upper Chamber, and no change can be made in its composition except as death might slowly remove its members. I venture to prophesy, sir, that before a very short time has elapsed a dead-lock may arise, and such an excitement created as has

never yet been seen in this country. Now, if this Constitution had been framed by the members of our Government, we could change some of its provisions—this provision would most certainly be altered—there is not a man in the Liberal ranks who dare vote for such a proposition as this, that could go before his constituents and say, "I have taken away the influence and control of the people over the Upper Chamber, and I have created an entirely independent body to be chosen by the present governments of the several provinces." But no, the Constitution is in the nature of a compact, a treaty, and cannot be changed. But sir, the composition of the Legislative Council becomes of more importance when we consider that the governors of the local legislatures are to be appointed by the General Government, as well as the Legislative Council; their appointment is to be for five years, and they are not to be removed without cause. I will venture upon another prediction and say we shall find there will be no such thing as responsible government attached to the local legislatures.

*Mr. Dunkin* [1]—There cannot be.

*Hon. Mr. Dorion*—There will be two, three, or four ministers chosen by the lieutenant-governors and who will conduct the administration of the country, as was formerly done in the times of *Sir Francis Bond Head*, *Sir John Colborn*, or *Sir James Craig*. You will have governments, the chief executives of which will be appointed and hold office at the will of the Governor. If that is not to be the case, why do not honourable gentlemen lay their scheme before us? Is this House, sir, going to vote a Constitution with the Upper House as proposed, without knowing what sort of local legislatures we are to have to govern us? Suppose, after we have adopted the main scheme, the Government come down with a plan for settling the local legislatures upon which great differences of opinion will arise, may it not happen then that the majority from Lower Canada will unite with a minority from Upper Canada and impose upon that section a local Constitution distasteful to a large majority of the people of Upper Canada. The whole scheme, sir, is absurd from beginning to end. It is but natural that gentlemen with the views of honourable gentlemen opposite want to keep as much power as possible in the hands of the Government—that is the doctrine of the Conservative party everywhere—that is the line which distinguishes the tories from the whigs—the tories always side with the Crown, and the liberals always want to give more power and influence to the people. The instincts of honourable gentlemen opposite, whether you take the Hon. Attorney General East or the Hon. Attorney General West, lead them to this—they think the hands of the Crown should be strengthened and the influence of the people, if possible, diminished—and this Constitution is a specimen of their handiwork, with a Governor-General appointed by the Crown; with local governors also, appointed by the Crown; with legislative councils, in the General Legislature, and in all the provinces, nominated by the Crown; we shall have the most illiberal Constitution ever heard of in any country where constitutional government prevails. The Speaker of the Legislative Council is also to be appointed by the Crown, this is another step backwards, and a little piece of patronage for the Government. We have heard in a speech lately delivered in Prince Edward Island or New Brunswick, I forget which, of the allurements offered to the delegates while here in the shape of prospective appointments as judges of the Court of Appeal, Speaker of the Legislative Council, and local governors—as one of the reasons assigned for the great unanimity which prevailed in the Conference.

*Hon. Mr. Holton*—They will divide all these nice things amongst them.

*Hon. Mr. Dorion*—I do not accuse honourable gentlemen of holding out these inducements, I only mention the fact from a speech I have read on the subject.

*Hon. Mr. Holton*—It was a speech of one of the delegates.

*Hon. Mr. Dorion*—I now come to another point. It is said that this Confederation is necessary for the purpose of providing a better mode of defence for this country. There may be people who think that by adding two and two together you make five. I am not of that opinion. I cannot see how by adding the 700,000 or 800,000 people, the inhabitants of the Lower Provinces, to the 2,500,000 inhabitants of Canada, you can multiply them so as to make a much larger force to defend the country than you have at present. Of course the connection with the British Empire is the link of communication by which the whole force of the Empire can be brought together for defence. But the position of this country under the proposed scheme is very evident. You add to the frontier four or five

[1] Christopher Dunkin, Member for Brome.

hundred more miles than you now have, and an extent of country immeasurably greater in proportion than the additional population you have gained; and if there is an advantage at all for the defence of the country, it will be on the part of the Lower Provinces and not for us. And as we find that we are about to enter into a very large expenditure for this purpose of defence—this having been formally announced in a speech delivered by the President of the Council at Toronto—and as Canada is to contribute to that expenditure to the extent of ten-twelfths of the whole, the other provinces paying only two-twelfths, it follows that Canada will pay ten-twelfths also of the cost of defence, which, to defend the largely extended country we will have to defend, will be much larger than if we remained alone. I find in the speech delivered by the President of the Council on that occasion, the statement:—

*I cannot conclude without referring to some other things which have received the grave attention of the Conference. And the first point to which I desire to call attention is the fact that the delegates have unanimously resolved that the united provinces shall be placed at the earliest moment in a thorough state of defence. The attacks which have been made upon us have created the impression that these provinces are in a weak and feeble state; if, then, we would do away with this false impression and place ourselves on a firm and secure footing in the eyes of the world, our course must be to put our country in such a position of defence that we may fearlessly look our enemies in the face. It is a pleasure to me to state, and I am sure it must be a pleasure to all present to be informed, that the Conference at Quebec did not separate before entering into a pledge to put the military and naval defences of the united Provinces in a most complete and satisfactory condition.*

*Hon. Mr. Holton*—Where is that resolution?

*Hon. Mr. Dorion*—It appears then that our course is to put "the military and naval defences" into "a most complete and satisfactory condition." Now I find that, according to these resolutions, the General Government is to have control of "the military and naval defences," but, of course, the cost of them is not stated. This I contend, then, that if the military and naval defences of all the provinces are to be provided for by the General Government, and if you have to increase the militia for this purpose, the Lower Provinces will pay only their proportion of two-twelfths, and Canada, while obtaining no greater defensive than at present, will have to pay five times as much as we are now paying. Why, sir, take a line dividing New Brunswick from Maine and you find it separates on the one side 250,000, thinly scattered over a vast territory, from 750,000 on the other, compact and powerful. These 250,000 Canada will have to defend, and it will have to pledge its resources for the purpose of providing means of defence along that extended line. And, if rumour be true, the Intercolonial Railway, this so-called great defensive work, is not to pass along Major *Robinson's* line. The statement has been made—I have seen it in newspapers usually well informed—that a new route has been found that will satisfy everybody or nobody at all; and while I am on this point I must say that it is most singular that we are called upon to vote these resolutions, and to pledge ourselves to pay ten-twelfths of the cost of that railway, without knowing whether there will be ten miles or one hundred miles of it in Lower Canada, or whether it will cost $10,000,000 or $20,000,000.

*Hon. Mr. Holton*—It will be nearer $40,000,000.

*Hon. Mr. Dorion*—In 1862, when the construction of this road was before the country, what was the cry raised by honourable gentlemen opposite? Why, that the *Macdonald-Sicotte* Government had pledged itself to build a railway at whatever cost it might come to; and those who were loudest in these denunciations, were the very gentlemen who have now undertaken to build the road without knowing or even enquiring what the cost of it will be. This, if I remember right, was the purport of a speech made by the Hon. Attorney General West at Otterville. I was satisfied, sir, at that time, to press my objections to the scheme and retire from the Government; but my colleagues were denounced without stint for having undertaken to build the railway and pay seven-twelfths of its cost, and now the House is asked by the very men who denounced them to pay ten-twelfths of it, without even knowing whether the work is practicable or not. We have heard for some time past that the engineer, Mr. *Fleming*, is prepared to make his report. Why is it not forthcoming?—why has it been kept back? The representatives of the people in this House will show an utter disregard of their duty if they do not insist upon having that report, and full explanations respecting the undertaking, as well as the scheme for the constitution of the local governments, before

they vote upon the resolutions before the House. It is folly to suppose that this Intercolonial Railway will in the least degree be conducive to the defence of the country. We have expended a large sum of money—and none voted it more cordially and heartily than myself—for the purpose of opening a military highway from Gaspé to Rimouski; and that road, in case of hostilities with our neighbours, would be found of far greater service for the transport of troops, cannon and all kinds of munitions of war, than any railway following the same or a more southern route possibly can be. That road cannot be effectually destroyed; but a railway lying in some places not more than fifteen or twenty miles from the frontier, will be of no use whatever, because of the readiness with which it may be attacked and seized. An enemy could destroy miles of it before it would be possible to resist him, and in time of difficulty it would be a mere trap for the troops passing along it, unless we had almost an army to keep it open. Upon this question of defence, we have heard so much during the past two or three years that I think it is time now we should have some plain explanations about it. We heard the other day from the honourable member for West Montreal—and I am always glad to quote him, he is usually so correct—that in less than a year the American army, the army of the Northern States, was increased from 9,000 to 800,000 men ready for service, and that in less than four years they were able to put to sea a fleet which, in point of numbers—I do not say in armament or value—was equal to the entire naval force of England. Well, the honourable gentleman might have gone further and shown that within a period of four years the Northern States have called into the field 2,300,000 men—as many armed men as we have men, women and children in the two Canadas—and that we hear every day of more being raised and equipped. It is stated that, in view of these facts, it is incumbent upon us to place ourselves in a state of defence. Sir, I say it here candidly and honestly, that we are bound to do everything we can to protect the country—but we are not bound to ruin ourselves in anticipation of a supposed invasion which we could not repel, even with the assistance of England. The battles of Canada cannot be fought on the frontier, but on the high seas and at the great cities on the Atlantic coast; and it will be nothing but folly for us to cripple ourselves by spending fifteen or twenty millions a year to raise an army of 50,000 men for the purpose of resisting an invasion of the country. The best thing that Canada can do is to keep quiet, and to give no cause for war. Let the public opinion of this country compel the press to cease the attacks it is every day making upon the Government and people of the United States; and then if war does come between England and the States—even if from no fault of ours—we will cast our lot with England and help her to fight the battle; but in the meantime it is no use whatever to raise or keep up anything like a standing army.

*Hon. Atty. Gen. Macdonald*—Will my honorable friend let me ask him how we can assist England in a war on the high seas unless we have a naval force?

*Hon. Mr. Dorion*—The honourable member for Peterborough stated the other day, and correctly I believe, that the place for our militia was behind the fortifications of our fortified places, where they would count for something and be of some use. No doubt of this. Why, sir, it is absurd to speak of defending this country with such a force as we could maintain when we have the recent example before our eyes of a country in Europe possessing as large a defensive force, literally wiped off the map by an invading army of some 75,000 or 80,000 men. The kingdom of Denmark consists now of only two small islands—less by far, in extent, than one of our large counties; and this dismemberment has been forced upon it, although it had a standing army of 30,000 men, and the feeling of the whole population was in favour of the war. I do not use this argument for the purpose of showing that something ought not to be done respecting our militia. I am willing that we should make sacrifices, if necessary for the purpose of organizing it thoroughly; but I am decidedly opposed to a standing army, and do not believe we could raise an army now that would be able to withstand the force that could be sent against it. We have sent to the frontier 2,000 men, whose services for a year will cost us a million and a half; and at the same rate of expenditure 50,000 men would cost us over thirty millions of money. Now, if the whole defence of the country is to rest upon us, I ask again what would such a force amount to? Now, sir, when I look into the provisions of this scheme, I find another most objectionable one. It is that which gives the General Government control over all the acts of the local legislatures. What difficulties may not arise under this system. Now, knowing that the General Government will be party in its character, may it not

for party purposes reject laws passed by the local legislatures and demanded by a majority of the people of that locality? This power conferred upon the General Government has been compared to the veto power that exists in England in respect to our legislation; but we know that the statesmen of England are not actuated by the local feelings and prejudices, and do not partake of the local jealousies, that prevail in the colonies. The local governments have therefore confidence in them, and respect for their decisions; and generally, when a law adopted by a colonial legislature is sent to them, if it does not clash with the policy of the Empire at large, it is not disallowed, and more especially of late has it been the policy of the Imperial Government to do whatever the colonies desire in this respect, when their wishes are constitutionally expressed. The axiom on which they seem to act is that the less they hear of the colonies the better. But how different will be the result in this case, when the General Government exercises the veto power over the acts of local legislatures. Do you not see that it is quite possible for a majority in a local government to be opposed to the General Government; and in such a case the minority would call upon the General Government to disallow the laws enacted by the majority? The men who shall compose the General Government will be dependent for their support upon their political friends in the local legislatures, and it may so happen that, in order to secure this support, or in order to serve their own purposes or that of their supporters, they will veto laws which the majority of a local legislature find necessary and good. We know how high party feeling runs sometimes upon local matters even of trivial importance, and we may find parties so hotly opposed to each other in the local legislatures, that the whole power of the minority may be brought to bear upon their friends who have a majority in the General Legislature, for the purpose of preventing the passage of some law objectionable to them but desired by the majority of their own section. What will be the result of such a state of things but bitterness of feeling, strong political acrimony and dangerous agitation?

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But, sir, respecting the defences of the country, I should have said at an earlier stage of my remarks that this scheme proposes a union not only with Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, but also with British Columbia and Vancouver's Island. Although I have not been able to get the information from the Government—for they do not seem to be very ready to give information—yet I understand that there are despatches to hand, stating that resolutions have been adopted in the Legislature of British Columbia asking for admission into the Confederation at once. I must confess, Mr. *Speaker*, that it looks like a burlesque to speak as a means of defence of a scheme of Confederation to unite the whole country extending from Newfoundland to Vancouver's Island, thousands of miles intervening without any communication, except through the United States or around Cape Horn.

*Hon. Atty. Gen. Cartier*—There is an Interoceanic Railway to be built.

*Hon. Mr. Dorion*—Yes, I suppose that is another necessity of Confederation, to which we may soon look forward. Some western extension of this Grand Trunk scheme for the benefit of Messrs. Watkin & Co., of the new Hudson's Bay Company. So far as Lower Canada is concerned, I need hardly stop to point out the objections to the scheme. It is evident, from what has transpired, that it is intended eventually to form a legislative union of all the provinces. The local governments, in addition to the General Government, will be found so burdensome, that a majority of the people will appeal to the Imperial Government for the formation of a legislative union. I may well ask if there is any member from Lower Canada, of French extraction, who is ready to vote for a legislative union. What do I find in connection with the agitation of this scheme? The honourable member for Sherbrooke stated at the dinner to the delegates given at Toronto, after endorsing everything that had been said by the Honourable President of the Council:—

*We may hope that, at no far distant day, we may become willing to enter into a Legislative Union instead of a federal union, as now proposed. We would have all have desired a legislative union, and to see the power concentrated in the Central Government as it exists in England, spreading the aegis of its protection over all the institutions of the land, but we found it was impossible to do that at first. We found that there were difficulties in the way which could not be overcome.*

Honourable members from Lower Canada are made aware that the delegates all desired a legislative union, but it could not be accomplished at once. This

Confederation is the first necessary step towards it. The British Government is ready to grant a Federal union at once, and when that is accomplished the French element will be completely overwhelmed by the majority of British representatives. What then would prevent the Federal Government from passing a set of resolutions in a similar way to those we are called upon to pass, without submitting them to the people, calling upon the Imperial Government to set aside the Federal form of government and give a legislative union instead of it? Perhaps the people of Upper Canada think a legislative union a most desirable thing. I can tell those gentlemen that the people of Lower Canada are attached to their institutions in a manner that defies any attempt to change them in that way. They will not change their religious institutions, their laws and their language, for any consideration whatever. A million of inhabitants may seem a small affair to the mind of a philosopher who sits down to write out a constitution. He may think it would be better that there should be but one religion, one language and one system of laws, and he goes to work to frame institutions that will bring all to that desirable state; but I can tell honorable gentlemen that the history of every country goes to show that not even by the power of the sword can such changes be accomplished. We have the history of the Greek race, having at one time a population of six millions, dwindling down to seven hundred thousand, and we find them even then, after several centuries of oppression, rising up and asserting their rights. We have the same circumstance in the history of Belgium, which was united to Holland with a view to secure the assimilation of the two countries, but fifteen years of trial had hardly elapsed when the whole of the Belgian people and Government rose *en masse* to protest against that union, and to assert their separate nationality. Sir, it is not only from the history of the past we may derive the lesson, but we have the circumstances of the present generation to guide us. I am astonished to see the honourable member for Montreal West helping a scheme designed to end in a legislative union, the object of which can only be to assimilate the whole people to the dominant population. In that honourable gentleman's own country the system has produced nothing but a dissatisfied and rebellious people. Is it desirable that in this country then we should pass a measure calculated to give dissatisfaction to a million of people? You may ascertain what the cost of keeping down a million of dissatisfied people is by the scenes that have been and are now transpiring on the other side of the line, where a fifth of the people of the United States has arisen and has caused more misery and misfortune to be heaped upon that country than could have been wrought in centuries of peaceful compromising legislation. Sir, if a legislative union of the British American Provinces is attempted, there will be such an agitation in this portion of the province as was never witnessed before—you will see the whole people of Lower Canada clinging together to resist by all legal and constitutional means, such an attempt at wresting from them those institutions that they now enjoy. They would go as a body to the Legislature, voting as one man, and caring for nothing else but for the protection of their beloved institutions and law, and making government all but impossible. The ninety Irish members in the British House of Commons, composed as it is of nearly seven hundred members, by voting together have caused their influence to be felt, as in the grants to the Maynooth College and some other questions. It would be the same way with the people of Lower Canada, and a more deplorable state of things would be the inevitable result. The majority would be forced by the minority to do things they would not, under the circumstances, think of doing. This is a state so undesirable that, although I am strongly opposed to the proposed Federal union, I am still more strongly opposed to a legislative union. Those who desire a legislative union may see from this what discordant elements they would have to deal with in undertaking the task, and what misery they would bring upon the country by such a step. I know there is an apprehension among the British population in Lower Canada that, with even the small power that the Local Government will possess, their rights will not be respected. How, then, can it be expected that the French population can anticipate any more favourable result from the General Government, when it is to possess such enormous powers over the destinies of their section of the country? Experience shows that majorities are always aggressive, and it cannot well be otherwise in this instance. It therefore need not be wondered at that the people of Lower Canada, of British origin, are ready to make use of every means to prevent their being placed at the mercy of a preponderating population of a different origin.

I agree with them in thinking that they ought to take nothing on trust in this matter of entering upon a new state of political existence, and neither ought we of French origin to do so, in relation to the General Government, however happy our relations to each other may be at present. . . .

Tuesday, *February* 21, 1865.

*Hon. Solicitor General Langevin*[1]—. . . . The honourable member for Hochelaga told us the other day that the plan of a Confederation was adopted and moved by the present Administration for the mere purpose of stifling the cry of representation by population. Well, and if it really were so, where does the honourable member find the harm in it? Is it not most important that we should stop that cry for representation based on population, in our present condition? Representation by population would have left us Lower Canadians in an inferior position relatively to that of Upper Canada—would have conferred on the latter the privilege of legislating for us, not only in general, but in local matters. The honourable member for Hochelaga ought to have been the last to reproach the present Government with having, by this measure of Confederation, stopped the cry for representation based on population. In 1854, the honourable member admitted, as he himself acknowledges, that representation based on population was just in principle, and the consequence of that admission was fatal. The consequence was that the honourable member was compelled to keep in the same track until the formation of the *Brown-Dorion* administration in 1858—an Administration which had no very long existence.

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. . . The question of representation based on population must be met; that question must be settled. To say that we will grant it is to wish to place us in a position of inferiority, and I, for my part, will never consent to place my section of the province in that position. Then there is another alternative that is proposed—annexation to the United States. I do not believe there is a single member in the House or out of the House who would consent to the annexation of Canada to the United States. But it is a question which must be examined when discussing that of Confederation, because it is one of the alternatives offered to us, and out of which we have to make a selection.

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What would be the fate of the French-Canadians in the case of annexation to the United States? Let us profit by the example of the French race in the United States, and enquire what has been the fate of the French in Louisiana? What has become of them? What has become of their language, their customs, their manners and their institutions? After the war, hardly a trace will remain to show that the French race has passed that way. So far as religion is concerned, we might not find ourselves so badly off; but we live in peace at the present day and are perfectly comfortable; Catholics and Protestants have the same rights and religious liberty, and they live as peacefully together as if there was but one religion in the land. . . .

Monday, *February* 27, 1865.

*Mr. Dunkin*—. . . . I am bound to repeat at the outset, that no one can do justice to a question like this, and start with the idea of at all ignoring details. Here is a measure proposed for our acceptance, embodied in seventy-two resolutions, and which resolutions affirm a great many more than seventy-two propositions, connected with almost every principle known to have reference to the theory and practice of popular government. I say it is a scheme which is as complex and as vast as one can well imagine, and declamation about first principles can be of no real use in its discussion—can avail only to mislead in reference to it. We have to deal with no mere abstract question of a nationality, or of union or disunion, or of a Federal as opposed to a Legislative union. It is idle to talk vaguely about the maintenance of British connection, or to go into magnificent speculations about the probable results of independence, or blindly to urge this scheme as a sure preventative of annexation to the United States. These cheap and easy generalities are thoroughly unreliable. The only question is, how is this plan, in its entirety, going to work? And this question is one which is not easy to answer; it is one requiring much patience, and a close examination of details. It is the question which, if the House will lend me its attention, I will endeavour to discuss to the extent of my ability. I may further take leave to

[1] Hon. H. L. Langevin, Member for Dorchester.

say at starting, that I do not approach this question from any new point of view whatever. Always I have been, and now I am, a unionist in the strictest and largest sense of the term. I desire to perpetuate the union between Upper and Lower Canada. I desire to see developed, the largest union that can possibly be developed (I care not by what name you call it) between all the colonies, provinces, and dependencies of the British Crown. I desire to maintain that intimate union which ought to subsist, but which unfortunately does not subsist as it ought, between the Imperial Government and all those dependencies. I am a unionist, who especially does not desire to see the provinces of Upper and Lower Canada disunited. To my mind, this scheme does not at all present itself as one of union; and if honourable gentlemen opposite will admit the truth, they will acknowledge that, practically, it amounts to a disunion between Upper and Lower Canada. I confess that I am irreconcilably opposed to that portion of the scheme. I repeat I do not care to see Upper and Lower Canada more dissevered than they are; on the contrary, I wish to see them brought into closer union; and far from regarding this scheme as cementing more closely the connection of these provinces with the British Empire, I look upon it as tending rather towards a not distant disunion of these provinces from the British Empire.

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If I could be astonished at anything in politics, Mr. *Speaker*, I should be astonished at the attempt which has been made by some honourable gentlemen on the Treasury benches to represent the state of the public feeling on this subject as not having that mere sudden, sensational, unreliable character which I have ascribed to it. Long forgotten expressions of individual opinion; clauses said to have formed part of bills not to be found, and not known to have been even drawn; motions threatened but never made, the small party fencing of past times, from before the days of the Canada Trade Act downwards, have been pressed into service to meet the exigencies of a hard case. Well, I shall not follow out that line of argument; it is not worth while. We all know that, from the time of the union of Canada, at all events until very lately indeed, nothing like serious discussion of the propriety or impropriety of a Federal union, or of any union at all, of the aggregate of these British American Provinces, has ever so little occupied the public mind.

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It can hardly be denied, Mr. *Speaker*, that there is a good deal of practical objection to the plan of shifting representation districts, which is what this system adopts, and what the system of the United States adopted. Every ten years the representation from each province in the House of Commons is to be changed or readjusted by a rule which, for all practical purposes, is essentially the same as that of the United States. Of course we have not the little addition of the allowance for the three-fifths of the slave population which they have; but decennially we are to take the population of the several provinces, and by a rule in all essentials common to the two systems, we are to declare how many representation districts are to be allowed to each province. Now, the result of that system must be that we can have no lasting constituencies for the future House of Commons. These representation districts cannot be kept to correspond with our municipal, business or registration districts, or with our districts for representation in our provincial legislatures. We are to have a set of special, shifting districts for the mere purpose of electing our Federal House of Commons. I must say that this principle is not, from a British point of view, a sound one. What we ought to do is, to try to establish in this country of ours a set of representation districts as permanent and as closely coinciding with our territorial divisions existing for other purposes, as circumstances will allow us to have them; sub-dividing or otherwise altering them, or erecting new ones, only as occasion may be found to require.

*Hon. Atty. Gen. Cartier*—We will do that for the local parliaments.

*Mr. Dunkin*—Perhaps so, and perhaps not. That distinction, however, is just what I complain of. We are to change our districts for purposes of representation in the local parliaments, if we like, but not unless we like. These subdivisions of our provinces may thus, in the main, be permanent. But for representation in the Federal Parliament we are, at each of these decennial periods, to have a general readjustment of the whole country, so as to divide each province anew into its due number of aliquot parts. This is an innovation on our usages, greatly for the worse. It goes to destroy that character of reality, convenience and

stability which—if our system, as a whole, is to have such character—had need be maintained to the utmost extent practicable, in respect of our constituencies and of our minor territorial delimitations generally. This changing every ten years brings together electors who have not been in the habit of acting with each other. In England they do nothing of this sort; they do not change their limits lightly. The several bodies of men who send representatives to the Imperial House of Commons have the habit of so coming together, as bodies not likely to be broken up. We ought to keep this as an element of our Constitution, but it is carefully eliminated from it.

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For all legislative purposes, we must look to have all our territorial divisions open to frequent, one might say perpetual, reconstruction; and this subject perpetually to the disturbing influences of the party warfare of the hour. The exigencies of that warfare, we may be sure, will tell; and whatever the party in the ascendant, whether in the country at large or locally, will find means in this part of our machinery for advancing its ends—means not quite of the sort to commend themselves to one's approval.

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In the United States, as is admitted, the Senate does a certain part of what we undertake here to do by means of a Cabinet. The Federal check so exercised by the Senate renders unnecessary, for any Federal purposes, the existence of a Cabinet. Indeed, they do not want a Cabinet for any purpose at all. It is not of their system. But here, with our chief magistrate not elected, we must have one. And yet, how are we to make it work, engrafted on a system which, in its essentials, is after all more American than British? This is what I have now come to. I have to ask honourable gentlemen opposite how they are going to organize their Cabinet, for these provinces, according to this so-called Federal scheme? I think I may defy them to show that the Cabinet can be formed on any other principle than that of a representation of the several provinces in that Cabinet. It is admitted that the provinces are not really represented to any Federal intent in the Legislative Council. The Cabinet here must discharge all that kind of function, which in the United States is performed, in the Federal sense, by the Senate. And precisely as in the United States, wherever a Federal check is needed, the Senate has to do Federal duty as an integral part of the Executive Government, so here, when that check cannot be so got, we must seek such substitute for it as we may, in a Federal composition of the Executive Council; that is to say, by making it distinctly representative of the provinces. Well, I must say that this sort of thing is utterly variant from, and inconsistent with British practice and British principle; with the constitutional system which makes the whole Cabinet responsible for every act of government. The British Cabinet is no Cabinet of sections but a unit.

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But now, if this Executive Council is to have in it, as I am sure it must have, in order to work at all, a representation of the different provinces, all or nearly all of them, let us look for a moment at what will have to be its number. There are two ways of calculating this—two sets of *data* on which to go. Either we must go upon what I may call the wants of the component parts, or we may start from the wants of the country as a whole. Suppose, then, we start from the wants of the different provinces. I take it that no section of the Confederation can well have less than one representative in the Cabinet. Prince Edward Island will want one; Newfoundland, one. A difficulty presents itself with regard to Lower Canada. On just the same principle upon which Lower Canada wants, for Federal ends, to have a proper representation in the Executive Council, on that same principle the minority populations in Lower Canada will each want, and reasonably want, the same thing. We have three populations in Lower Canada—the French-Canadians, the Irish Catholics, and the British Protestants. In other words there are the Catholics and the non-Catholics, and the English-speaking and the non-English-speaking, and these two cross-lines of division cut our people into the three divisions I have just indicated. Well, if in a government of this Federal kind the different populations of Lower Canada are to feel that justice is done them, none of them are to be there ignored. The consequences of ignoring them might not be very comfortable. Heretofore, according to general usage, the normal amount of representation for Lower Canada in the Executive Council has been six seats out of twelve. Of those, four may be said legitimately

to belong to the French-Canadians, one to the Irish Catholics, and one to the British Protestant class. Every one is satisfied that that is about the fairest thing that can be done. There have been times when these proportions have varied. There have been exceptional times when the British Protestant population has had to put up with a Solicitor-General out of the Cabinet, and has done so with no very loud complaint. There has never been a time, I think, when there was not an Irish Catholic in the Cabinet. There have been times when the number of French-Canadians has been less than four, and there was then much complaint. Six members—four, one and one—are just about what you must give to please each section of Lower Canada. Well, sir, if there are to be six for Lower Canada, there must be six or seven for Upper Canada, and you cannot very well leave less than three each for Nova Scotia and New Brunswick, and, as I have said, one each for Newfoundland and Prince Edward Island; and thus you have an Executive Council of twenty or twenty-one members, besides all we might have to add for other provinces; and this, I rather think, is a little too many. The thing could not be done; for so large a Cabinet could never work. Suppose then, on the other hand, that we start with the idea of limiting the number of our Executive Council to meet what I may call the exigencies of the country as a whole. Eleven, twelve or thirteen—the latter, as an honourable member observes, is an unlucky number—will be as many as we can possibly allow. Of this number one, as before, will be wanted for Newfoundland and one for Prince Edward Island. If one is wanted for each of the little provinces, New Brunswick and Nova Scotia will be sorely discontented unless they get, at least, two apiece; and neither Lower Canada nor Upper Canada will be contented with the three left for each of them. And for Lower Canada, in particular, how will anyone divide this intractable figure between her French, Irish and British? Shall we give them one apiece, and ask the French-Canadian element to be content with one voice in a cabinet of a dozen?—or, give that element two, without satisfying it—so leaving out either the Irish or the British, to its intense disgust?—or give the preponderating element the whole, to the intense disgust of both the others? It will be none too easy a task, sir, I think, to form an Executive Council with its three members for Lower Canada, and satisfy the somewhat pressing exigencies of her creeds and races.

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Let me first take one feature of the scheme, or, I might say, one absence of a feature from the scheme—the non-provision of anything like provincial constitutions. We are not told about them; they are kept back completely in the dark; it is part of the scheme that we are not to know what it means them to be. It is part of the scheme, too, from all appearance, that they may not be at all alike. For anything I can see, Nova Scotia will have a right under this scheme to devise a system of responsible government, with a cabinet and two branches of the legislature. New Brunswick, if it pleases, may have only one legislative body, with or without responsible government. So may the Prince Edward Island people have anything they like; and the people of Newfoundland may do what they like, and so may we in Canada. Lower Canada may even have a constitution of one kind, and Upper Canada one of a totally different kind. There may be no two of our six or more local constitutions framed on the same model. It seems to be meant that these constitutions shall be as varied as the people of the different provinces may see fit to make them; nay, there are even left to the people of the different provinces the same large powers for amending them afterwards. To be sure there is the grand power of disallowance by the Federal Government, which we are told, in one and the same breath, is to be possessed by it, but never exercised.

*Hon. Atty. Gen. Cartier*—The presumption is, it will be exercised in case of unjust or unwise legislation.

*Mr. Dunkin*—The hon. gentleman's presumption reminds me of one, perhaps as conclusive, but which Dickens tells us failed to satisfy his Mr. Bumble. That henpecked beadle is said to have said, on hearing of the legal presumption that a man's wife acts under his control: "If the law presumes anything of the sort, the law's a fool—a natural fool!" If this permission of disallowance rests on a presumption that the legislation of our provinces is going to be unjust or unwise, it may be needed; but under that idea, one might have done better either not to allow, or else to restrict within narrower limits, such legislation. If the promised non-exercise of the power to disallow rests on a presumption that all will be done

justly and wisely in the provincial legislatures, the legislative power is well given; but then there is no need, on the other hand, for the permission to disallow. I repeat, this system, or no-system, aims at nothing like uniformity between the general and local constitutions, or between the local constitutions themselves; and in this respect, it is essentially at variance with the much wiser system adopted in the United States. It further allows of no real autonomy; in fact, the only trace of uniformity it can be said to have about it, consists in its disallowance of all autonomy to the provinces. Now, let me take up those few features that undoubtedly are given to us, as characterizing our provincial system. Wide as we have seen the latitude is which the provinces may take in framing their constitutions, there are a few matters as to which the system lays down an iron rule. There is the appointment of a lieutenant-governor which is to be vested in the General Government. It is not said in so many words that he is to be a colonist, but I think it may be taken for granted that he will be. It is not very likely that we shall get any right honourable gentleman or eminent statesmen from home to come out here for an appointment of that kind; and I take for granted, therefore, that the General Government will always nominate Mr. Somebody or other, of local distinction, to this office of lieutenant-governor.

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Suppose any of our politicians, whether of this province or of any other in the Confederacy, say Canada, Newfoundland or Nova Scotia, to be assuming this *rôle* of lieutenant-governor in any of our provinces. He has this disadvantage to begin with; he has to that moment been passing through that ordeal of abuse under which every prominent public man in this country must have suffered before attaining any distinction whatever. . . . No matter over what colony appointed, or from what colony coming, a lieutenant-governor will have hard cards to play, and will have very much to put up with from the people over whom he is set, on this mere score of his past political exploits, and he will not find it easy, either, to get along without exciting a good deal of ill feeling as he goes. He has been known as a politician, and will be held to be favourable or unfavourable to this or that party in the province he governs.

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But how do we stand here, Mr. *Speaker*, as to the attributes of our own provincial legislatures and governments, on the one hand, and those of the Federal power on the other? Do we follow American example, and give so much to the union and the rest to the provinces; or so much to them, and the rest to it? Either rule would be plain; but this plan follows neither. It simply gives us a sort of special list for each; making much common to both, and as to much more, not showing what belongs to either. I cannot go now . . . into detail on this head. I can give no more than some few specimens; and I take first the three subjects of the fisheries, agriculture, and immigration. These three subjects are equally assigned to the General Legislature on the one hand, and the Provincial Legislature on the other. It is provided by the 45th resolution, that in all such cases, wherever any statutes of the general and local parliaments clash, those of the General Parliament shall override those of the local. So that in these matters of the fisheries, agriculture and immigration, either the local legislatures must not legislate at all, or if they do the General Legislature may at any time undo anything they may have done. One can easily foresee any amount of clashing of authority in such cases. Fishery regulations of all sorts—bounties perhaps; the thousand questions affecting agriculture. Or to take just one that suggests itself as to immigration; one province wishes, perhaps, to encourage immigration of a certain kind, say, for instance, from the continent of Europe. It is a legitimate wish; but the Federal Legislature may, perhaps, in the varying shifts of public opinion, adopt a different policy, and reverse all that the province may have done. To what end give powers to the local parliaments which may thus be taken away at any moment by the Federal Legislature? But, Mr. *Speaker*, there are a hundred other cases as to which I could satisfy the House, had I time for doing so, that more or less of this confusion arises. Take the subject of marriage and divorce for one—a subject on which there is a great deal of local prejudice and feeling, and into which even religious convictions largely enter. That matter is given to the General Legislature. But on the other hand the larger matter, civil rights—of which this of marriage and divorce, from one point of view, forms a mere part—is given to the local legislatures. I turn to another matter, haphazard—the subjects of railway legislation, of railway incoporation, and of rail-

way amalgamation. What Legislature has power in these matters under this scheme? I am not sure that there are not here as nice a lot of pretty little questions as one would desire to see in a summer's day.

. . . We find it stated that "The seat of Government of the Federated Provinces shall be Ottawa, subject to the royal prerogative." It is distinctly laid down as a part of our system that the royal prerogative, the right to change the seat of the Federal Government at will, is to be maintained. But I venture to say that the maintaining of that right is simply inconsistent with the practical working out of a federal system. And this is a matter involving a good deal of anomaly, as honourable gentlemen will see when they begin to think of it. The Governor General or Viceroy, the all but king of this Confederacy, with his all but Imperial Government, and all but Imperial Legislature, constituted no matter how, resident within the territorial jurisdiction of a subordinate province! The police of the Federal capital, not Federal but provincial! That thing won't do.

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We have a large class whose national feelings turn towards London, whose very heart is there; another large class whose sympathies centre here at Quebec, or in a sentimental way may have some reference to Paris; another large class whose memories are of the Emerald Isle; and yet another whose comparisons are rather with Washington; but have we any class of people who are attached, or whose feelings are going to be directed with any earnestness, to the city of Ottawa, the centre of the new nationality that is to be created? In the times to come, when men shall begin to feel strongly on those questions that appeal to national preferences, prejudices and passions, all talk of your new nationality will sound but strangely. Some other older nationality will then be found to hold the first place in most people's hearts.

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Tuesday, *February* 28, 1865.

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In all the provinces the provincial governments will, in a quiet way, want money, and the provincial legislators and people will want it yet more; grants for roads and bridges, for schools, for charities, for salaries, for contingencies of the legislative body—for all manner of ends they will be wanting money, and where is it to come from? Whether the constitution of the Provincial Executive savours at all of responsible government or not, be sure it will not be anxious to bring itself more under the control of the legislature, or to make itself more odious than it can help, and the easiest way for it to get money will be from the General Government. I am not sure, either, but that most members of the provincial legislatures will like it that way the best. It will not be at all unpopular, the getting of money so. Quite the contrary. Gentlemen will go to their constituents with an easy conscience, telling them: "True, we had not much to do in the Provincial Legislature, and you need not ask very closely what else we did; but I tell you what, we got the Federal Government to increase the subvention to our province by five cents a head, and see what this gives you—$500 to that road—$1,000 to that charity—so much here, so much there. That we have done; and have we not done well?" I am afraid in many constituencies the answer would be: "Yes, you have done well; go and do it again." I am afraid the provincial constituencies, legislatures and executives will all show a most calf-like appetite for the milking of this one most magnificent government cow.

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And even this is not all. Not only will you have these comparatively direct demands—more or less ingeniously, but always irresistibly—made, but you will have demands made in a more indirect form which it will be yet easier to carry, from their consequences not being so clearly seen, and which will therefore be still worse in their effects. I speak of that tremendous catalogue of outlays which may be gone into without the appearance of a grant to any particular province—the costly favours which may be done in respect of interprovincial ferries, steamship lines between or from the provinces, railways between or through the provinces, telegraph lines, agriculture, immigration, quarantine, fisheries, and so forth. There will be claims of every description under all these heads; and besides them there will be the long roll of internal improvements of all kinds whether for the benefit of one or of more than one of the provinces. For any local work in which it can be at all pretended that it is of general interest,

pressure may be brought to bear upon the General Government and Legislature, and whenever one province succeeds in getting any such grant, every other province must be dealt with in the same way. Compensation must be made all round, and no human intellect can estimate the degree of extravagance that before long must become simply inevitable. Sir, with our Upper and Lower Canada we have had pretty good proof of this. We know that whenever anything has had to be done for one section of this province, it has constantly been found necessary to do something of the same or of some other kind for the other. If either needed anything very badly, then the ingenuity of the Minister of Finance had to be exercised to discover something else of like value to give the other. In one word, unless I am more mistaken than I think I can be, these local governments will be pretty good daughters of the horse-leech, and their cry will be found to be pretty often and pretty successfully—"Give, give, give!"

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We are going to be called upon to spend money for yet another kindred purpose, and a large amount too—and this, as a part of this scheme. Our star of empire is to wing its way westward; and we are to confederate everything in its track, from Newfoundland to Vancouver's Island, this last included. But, between us and it, there lies the Hudson Bay territory. So, of course, we must acquire that for confederation purposes; and the plan is, that before we get it we shall have to pay for the elephant—though, after we get him, we may find him costly and hard to keep.

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Disguise it how you may, the idea that underlies this plan is this, and nothing else—that we are to create here a something—kingdom, viceroyalty or principality—something that will soon stand in the same position towards the British Crown that Scotland and Ireland stood in before they were legislatively united with England; a something having no other tie to the Empire than the one tie of fealty to the British Crown—a tie which in the cases, first, of Scotland, and then of Ireland, was found, when the pinch came, to be no tie at all; which did not restrain either Scotland or Ireland from courses so inconsistent with that of England as to have made it necessary that their relations should be radically changed, and a legislative union formed in place of a merely nominal union. Suppose you do create here a kingdom or a principality, bound to the Empire by this shadow of a tie, the day of trial cannot be far distant, when this common fealty will be found of as little use in our case as it was in theirs; when, in consequence, the question will force itself on the Empire and on us, between entire separation on the one hand, and a legislative union on the other. But a legislative union of British America with the United Kingdom must be, in the opinion of, one may say, everybody at home and here, a sheer utter impossibility; and when the question shall come to be whether we are so to be merged in the United Kingdom or are to separate entirely from it, the answer can only be—"At whatever cost, we separate." Sir, I believe in my conscience that this step now proposed is one directly and inevitably tending to that other step; and for that reason—even if I believed, as I do not, that it bids fair to answer ever so well in the other respects—because I am an Englishman and hold to the connection with England, I must be against this scheme.

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The real danger is not of war with the United States. It is from what I may call their pacific hostility—from trouble to be wrought by them within this country—trouble to arise out of refusal of reciprocity—repeal of the bonding system—custom-house annoyances—passport annoyances; from their fomenting difficulties here, and taking advantage of our local jealousies; from the multiplied worries they may cause us by a judicious alternation of bullying and coaxing, the thousand incidents which may easily be made to happen if things are not going on quite well in this country, and the people and government of the States are minded to make us feel the consequences of our not getting on quite so well as we might. Whether the union of the States is restored or not, this kind of thing can go on. The danger is, that either the whole United States, or those portions of the United States which are near us, and which are really stronger than we are, and enterprising enough and ambitious enough, and not very fond of us, and not at all fond of the Mother Country, not at all unwilling to strike a blow at her and to make us subservient to their own interests and

ambition—the danger is, I say, that the United States, or those portions of the United States near us, may avail themselves of every opportunity to perplex us, to embroil us in trouble, to make us come within the disturbing influences of their strong local attraction. Now, to pretend to tell me that the United States or the Northern States, whichever you please, are going to be frightened, from a policy of that kind, by our taking upon ourselves great airs, and forming ourselves into a grand Confederation, is to tell me that their people are, like the Chinese, a people to be frightened by loud noises and ugly grimaces. I do not believe they are.

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## CLXXII

## WESTMINSTER PALACE HOTEL (LONDON) RESOLUTIONS ON FEDERATION, DECEMBER 4, 1866

[Trans.: Pope, *op. cit.*]

1. The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such Union can be effected on principles just to the several Provinces.

2. In the Confederation of the British North American Provinces the system of Government best adapted under existing circumstances to protect the diversified interests of the several Provinces and secure efficiency, harmony, and permanency in the working of the Union is a General Government charged with matters of common interest to the whole country and Local Governments for each of the Canadas, and for the Provinces of Nova Scotia and New Brunswick, charged with the control of local matters in their respective sections, provision being made for the admission into the Confederation on equitable terms of Newfoundland, Prince Edward Island, the North west Territory, and British Columbia.

3. In framing a Constitution for the General Government the Conference, with a view to the perpetuation of the connexion with the mother country, and the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as circumstances will permit.

4. The executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well-understood principles of the British Constitution, by the Sovereign personally, or by the representative of the Sovereign duly authorized.

5. The Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

6. There shall be a General Legislature or Parliament for the Confederation, composed of the Sovereign, a Legislative Council, and a House of Commons.

7. For the purpose of forming the Legislative Council the Confederation shall be considered as consisting of three divisions:—1st, Upper Canada; 2nd, Lower Canada; and 3rd, Nova Scotia and New Brunswick; each division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by 24 members; Lower Canada by 24 members; and the Maritime Provinces by 24 members, of which Nova Scotia shall have 12 and New Brunswick 12 members.

9. The Colony of Prince Edward Island when admitted into the Confederation shall be entitled to a representation of four members in the Legislative Council. But in such case the members allotted to Nova Scotia and New Brunswick shall be diminished to 10 each, such diminution to take place in each Province as vacancies occur.

10. The Colony of Newfoundland when admitted into the Confederation shall be entitled to a representation in the Legislative Council of four members.

11. The North-west Territory and British Columbia shall be admitted into the Union on such terms and conditions as the Parliament of the Confederation shall deem equitable, and as shall receive the assent of the Sovereign, and in case of the Province of British Columbia as shall be agreed to by the Legislature of such Province.

12. The members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government from among residents of the

Province for which they are severally appointed, and shall hold office during life. If any legislative Councillor shall for two consecutive sessions of Parliament fail to give his attendance in the said Council, his seat shall thereby become vacant.

13. The members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of 30 years, shall each possess in the Province for which they are appointed a continuous real property qualification of 4,000 dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts, and liabilities, and shall possess a continuous residence in the Province for which they are appointed, except in the case of persons holding positions which require their attendance at the seat of Government pending their tenure of office.

14. If any question shall arise as to the qualification of a legislative councillor, the same shall be determined by the Legislative Council.

15. The members of the Legislative Council for the Confederation shall in the first instance be appointed upon the nomination of the Executive Governments of Canada, Nova Scotia and New Brunswick respectively, and the number allotted to each Province shall be nominated from the Legislative Councils of the different Provinces, due regard being had to the fair representation of both political parties; but in case any member of the Local Council, so nominated, shall decline to accept, it shall be competent for the Executive Government in any Province to nominate in his place a person who is not a member of the Local Council.

16. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

17. Each of the twenty-four Legislative Councillors representing Lower Canada in the Legislative Council of the General Legislature shall be appointed to represent one of the twenty-four electoral divisions mentioned in Schedule A of Chapter 1, of the Consolidated Statutes of Canada, and such councillor shall reside or possess his qualification in the division he is appointed to represent.

18. The basis of representation in the House of Commons shall be population, as determined by the official census every ten years, and the number of members, at first, shall be 181, distributed as follows:

| | |
|---|---|
| Upper Canada | 82 |
| Lower Canada | 65 |
| Nova Scotia | 19 |
| New Brunswick | 15 |

19. Until the first general election after the official census of 1871 has been made up there shall be no change in the number of representatives from the several sections.

20. Immediately after the completion of the census of 1871, and immediately after every decennial census thereafter, the representation from each Province in the House of Commons shall be re-adjusted on the basis of population, such re-adjustment to take effect upon the termination of the then existing Parliament.

21. For the purpose of such re-adjustments, Lower Canada shall always be assigned 65 members, and each of the other Provinces shall, at each re-adjustment, receive for the ten years then next succeeding the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the census then last taken by having 65 members.

22. No reduction shall be made in the number of members returned by any Province unless its population shall have decreased relatively to the population of the whole Union to the extent of 5 per centum.

23. In computing at each decennial period the number of members to which each Province is entitled, no fractional parts shall be considered, unless when exceeding one-half the number entitling to a member, in which case a member shall be given for each such fractional part.

24. The number of members may at any time be increased by the General Parliament, regard being had to the proportionate rights then existing.

25. Until provisions are made by the General Parliament, all the laws which at the date of the proclamation constituting the Union are in force in the Provinces respectively, relating to the qualification and disqualification of any person

to be elected, or to sit or vote as a member of the Assembly in the said Provinces respectively, and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to returning officers and their powers and duties, and relating to the proceedings at elections and to the period during which such elections may be continued, and relating to the trial of controverted elections and the proceedings incident thereto, and relating to the vacating of seats of members and to the issuing and execution of new writs in case of any seat being vacated otherwise than by a dissolution, shall respectively apply to elections of members to serve in the House of Commons, for places situate in those Provinces respectively.

26. Every House of Commons shall continue for five years from the day of the return of the writs choosing the same, and no longer; subject, nevertheless, to be sooner prorogued or dissolved by the Governor General.

27. There shall be a session of the General Parliament once at least in every year, so that a period of twelve calendar months shall not intervene between the last sitting of the General Parliament in one session and the first sitting thereof in the next session.

28. The General Parliament shall have power to make laws for the peace, welfare, and good government of the Confederation (saving the sovereignty of England), and especially laws respecting the following subjects:—

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by all or any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. Lines of steam or other ships, railways, canals, and other works connecting any two or more of the Provinces together, or extending beyond the limits of any Province.
7. Lines of steamships between the Confederated Provinces and other countries.
8. Telegraphic communication and the incorporation of telegraph companies.
9. All such works as shall, although lying wholly within any Province, be specially declared by the Acts authorizing them to be for the general advantage.
10. The census and statistics.
11. Militia, military and naval service, and defence.
12. Beacons, buoys, lighthouses, and Sable Island.
13. Navigation and shipping.
14. Quarantine.
15. Sea coast and inland fisheries.
16. Ferries between any Province and a foreign country, or between any two Provinces.
17. Currency and coinage.
18. Banking, incorporation of banks, and the issue of paper money.
19. Savings banks.
20. Weights and measures.
21. Bills of exchange and promissory notes.
22. Interest.
23. Legal tender.
24. Bankruptcy and insolvency.
25. Patents of invention and discovery.
26. Copyrights.
27. Indians, and lands reserved for the Indians.
28. Naturalization and aliens.
29. Marriage and divorce.
30. The criminal law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters.
31. The establishment, maintenance and management of penitentiaries.
32. Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, and New Brunswick, and rendering uniform the procedure of all or any of the Courts in these provinces; but any statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof; and the power of repealing,

amending, or altering such laws shall henceforward remain with the General Parliament only.

33. The establishment of a General Court of Appeal for the Confederation.

34. Immigration.

35. Agriculture.

36. And generally respecting all metters of a general character not specially and exclusively reserved for the Local Legislatures.

29. The General Government and Parliament shall have all powers necessary or proper for performing the obligations of the Confederation as part of the British Empire, to Foreign countries, arising under treaties between Great Britain and such countries.

30. The powers and privileges of the House of Commons of the United Kingdom of Great Britain and Ireland shall be held to appertain to the House of Commons of the Confederation, and the powers and privileges appertaining to the House of Lords in its legislative capacity shall be held to appertain to the Legislative Council.

31. The General Parliament may from time to time establish additional courts, and the General Government may appoint judges and officers thereof, when the same shall appear necessary, or for the public advantage, in order to the due execution of the laws of such Parliament.

32. All courts, judges and officers of the several Provinces shall aid, assist, and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be courts, judges, and officers of the General Government.

33. The General Government shall appoint and pay the salaries of the judges of the superior and district and county courts in each Province, and Parliament shall fix their salaries.

34. Until the consolidation of the laws of Upper Canada, Nova Scotia, and New Brunswick, the judges of these Provinces appointed by the General Government shall be selected from their respective bars.

35. The judges of the courts of Lower Canada shall be selected from the bar of Lower Canada.

36. The judges of the Court of Admiralty shall be paid by the General Government.

37. The judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable on the address of both Houses of Parliament.

38. For each of the Provinces there shall be an executive officer styled the Governor, who shall be appointed by the Governor-General in Council, under the Great Seal of the Confederation, during pleasure; such pleasure not to be exercised before the expiration of the first five years except for cause, such cause to be communicated in writing to the Governor immediately after the exercise of the pleasure as aforesaid, and also by message to both Houses of Parliament within the first week of the first session afterwards; but the appointment of the first Governors shall be provisional and they shall hold office strictly during pleasure.

39. The Governor of each Province shall be paid by the General Government.

40. The Local Government and Legislature of each Province shall be constructed in such manner as the Legislature of each such Province shall provide.

41. The Local Legislature shall have power to make laws respecting the following subjects:—

1. The altering or amending their constitution from time to time.
2. Direct taxation, and in the case of New Brunswick the right of levying timber dues by the mode and to the extent now established by law, provided such timber be not the produce of the other Provinces.
3. Borrowing money on the credit of the Province.
4. The establishment and tenure of local offices, and the appointment and payment of local officers.
5. Agriculture.
6. Immigration.
7. Education, saving the rights and privileges which the Protestant or Catholic minority in any Province may have by law as to denominational schools at the time when the Union goes into operation. And in any Province where a system of separate or dissentient schools by law obtains, or where the Local Legislation may hereafter adopt a system of separate or dissentient schools, an appeal shall lie to the Governor-General in Council

of the General Government from the acts and decisions of the local authorities, which may affect the rights or privileges of the Protestant or Catholic minority in the matter of education; and the General Parliament shall have power in the last resort to legislate on the subject.

8. The sale and management of public lands, excepting lands belonging to the General Government.
9. The establishment, maintenance, and management of public and reformatory prisons.
10. The establishment, maintenance and management of hospitals, asylums, charities, and eleemosynary institutions, except marine hospitals.
11. Municipal institutions.
12. Shop, saloon, tavern, auctioneer, and other licenses for local revenue.
13. Local works.
14. The incorporation of private or local companies, except such as relate to matters assigned to the General Parliament.
15. Property and civil rights (including the solemnization of marriage), excepting portions thereof assigned to the General Parliament.
16. Inflicting punishment by fine, penalties, imprisonment, or otherwise, for the breach of laws passed in relation to any subject within their jurisdiction.
17. The administration of justice, including the constitution, maintenance, and organization of the courts, both of civil and criminal jurisdiction, including also the procedure in civil matters.
18. And generally all matters of a private or local nature not assigned to the General Parliament.

42. All the powers, privileges, and duties conferred and imposed upon Catholic separate schools and school trustees in Upper Canada shall be extended to the Protestant and Catholic dissentient schools in Lower Canada.

43. The power of respiting, reprieving, and pardoning prisoners convicted of crimes, and of commuting and remitting of sentences, in whole or in part, which belongs of right to the Crown, shall, except in capital cases, be administered by the Governor of each Province in Council, subject to any instructions he may from time to time receive from the General Government, and subject to any provisions that may be made in this behalf by the General Parliament.

44. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the Local Legislature, and the latter shall be void so far as they are repugnant to or inconsistent with the former.

45. Both the English and French languages may be employed in the General Parliament, and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts, and in the courts of Lower Canada.

46. No lands or property belonging to the General or Local Governments shall be liable to taxation.

47. All bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons or House of Assembly as the case may be.

48. The House of Commons or House of Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost to any purpose, not first recommended by message of the Governor-General or the Governor, as the case may be, during the session in which such vote, resolution, address, or Bill is passed.

49. Any Bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and any Bill of the Local Legislatures may, in like manner, be reserved for the consideration of the Governor-General.

50. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto; and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor-General within one year after the passing thereof.

51. The seat of Government of the Confederation shall be Ottawa, subject to the Royal Prerogative.

52. Subject to any future action of the respective Local Governments, the seat of the Local Governments in Upper Canada shall be Toronto; of Lower Canada Quebec; and the seats of the Local Governments in the other Provinces shall be as at present.

53. All stocks, cash, bankers' balances, and securities for money belonging to each Province at the time of the Union, except as hereinafter mentioned, shall belong to the General Government.

54. The following public works and property of each Province shall belong to the General Government, to wit:—

1. Canals.
2. Public harbours.
3. Lighthouses and piers, and Sable Island.
4. Steam-boats, dredges, and public vessels.
5. Rivers and lake improvements.
6. Railways and railway stocks, mortgages, and other debts due by railway companies.
7. Military roads.
8. Custom-houses, Post offices, and all other public buildings, except such as may be set aside by the General Government for the use of the Local Legislatures and Governments.
9. Property transferred by the Imperial Government and known as ordnance property.
10. Armouries, drill-sheds, military clothing, and munitions of war, and lands set apart for general public purposes.

55. All lands, mines, minerals, and royalties vested in Her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, and New Brunswick, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate, subject to any trusts that may exist in respect to any of such lands, or to any interest of other persons in respect of the same.

56. All sums due from purchasers or lessees of such lands, mines, or minerals at the time of the Union shall also belong to the Local Government.

57. All assets connected with such portions of the public debt of any Province as are assumed by the Local Governments shall also belong to those Governments respectively.

58. The several Provinces shall retain all other public property therein, subject to the right of the General Government to assume any lands or public property required for fortifications or the defence of the country.

59. The General Government shall assume the debts and liabilities of each Province.

60. The debt of Canada, not specially assumed by Upper and Lower Canada respectively shall not exceed at the time of the Union 62,500,000 dollars. Nova Scotia shall enter the Union with a debt not exceeding 8,000,000 dollars, and New Brunswick with a debt not exceeding 7,000,000 dollars. But this stipulation is in no respect intended to limit the powers given to the respective Governments of those Provinces by legislative authority, but only to determine the maximum amount of charge to be assumed by the General Government.

61. In case Nova Scotia or New Brunswick should not have contracted debts at the date of Union equal to the amount with which they are respectively entitled to enter the Confederation, they shall receive by half-yearly payment, in advance from the General Government, the interest at 5 per cent on the difference between the actual amount of their respective debts and such stipulated amounts.

62. In consideration of the transfer to the General Parliament of the powers of taxation, the following sums shall be paid by the General Government to each Province for the support of their Local Governments and Legislatures:—

| | |
|---|---|
| Upper Canada . . . . . | $80,000 |
| Lower Canada . . . . . | 70,000 |
| Nova Scotia . . . . . | 60,000 |
| New Brunswick . . . . . | 50,000 |
| | $260,000 |

And an annual grant in aid of each Province shall be made equal to 80 cents per head of the population, as established by the census of 1861; and in the case of Nova Scotia and New Brunswick by each subsequent decennial census, until the population of each of those Provinces shall amount to 400,000 souls, at which rate it shall thereafter remain. Such aid shall be in full settlement of all future demands upon the General Government for local purposes, and shall be paid

half-yearly in advance to each Province; but the General Government shall deduct from such subsidy all sums paid as interest on the public debt of any Province in excess of the amount provided under the 60th resolution.

63. The position of New Brunswick being such as to entail large immediate charges upon her local revenues, it is agreed that for the period of ten years from the time when the Union takes effect an additional allowance of 63,000 dollars per annum shall be made to that Province; but that so long as the liability of that Province remains under 7,000,000 dollars, a deduction equal to the interest on such deficiency shall be made from the 63,000 dollars.

64. All engagements that may before the Union be entered into with the Imperial Government for the defence of the country shall be assumed by the General Government.

65. The construction of the Intercolonial Railway being essential to the consolidation of the Union of British North America, and to the assent of the Maritime Provinces thereto, it is agreed that provision be made for its immediate construction by the General Government, and that the Imperial guarantee for £3,000,000 sterling pledged for this work be applied thereto, so soon as the necessary authority has been obtained from the Imperial Parliament.

66. The communications with the North-western Territory, and the improvements required for the development of the trade of the great west with the seaboard, are regarded by this Conference as subjects of the highest importance to the Confederation, and shall be prosecuted at the earliest possible period that the state of the finances will permit.

67. The sanction of the Imperial Parliament shall be sought for the Union of the Provinces on the principles adopted by this Conference.

68. That Her Majesty the Queen be solicited to determine the rank and name of the Confederation.

69. That a copy of these resolutions, signed by the Chairman and Secretary of the Conference, be transmitted to the Right Honourable the Secretary of State for the Colonies.

## CLXXIII

## THE BRITISH NORTH AMERICA ACT, 1867

(30 & 31 Victoria, c. 3.)

*An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for purposes connected therewith.*

(29th March, 1867.)

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom: [1]

And whereas such a Union would conduce to the welfare of the Provinces and promote the interests of the British Empire:

And whereas on the establishment of the Union by authority of Parliament, it is expedient not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared:

And whereas it is expedient that provision be made for the eventual admission into the Union of other parts of British North America:

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:

### I. Preliminary.

Short title.

1. This Act may be cited as *The British North America Act*, 1867.

Provisions referring to the Queen.

2. The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

[1] 'A single line imported in the system, that mighty and complex and somewhat indefinite aggregate called the British constitution.' Edward Blake, in *The Ontario Lands' Case*.

## II. Union.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion under the name of Canada; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.[1]

Commencement of subsequent provisions of Act.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say on and after the day appointed for the Union taking effect in the Queen's Proclamation; and in the same provisions, unless it is otherwise espressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia and New Brunswick.

Provinces of Ontario and Quebec;

6. The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada, shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Nova Scotia and New Brunswick.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

Decennial census.

8. In the general census of the population of Canada, which is hereby required to be taken in the year One thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

## III. Executive Power.

Executive power in the Queen.

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

Provisions referring to Governor-General.

10. The Provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the Chief Executive Officer or Administrator, for the time being carrying on the Government of Canada, on behalf and in the name of the Queen, by whatever title he is designated.

Constitution of Privy Council for Canada.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be Members of that Council shall be, from time to time, chosen and summoned by the Governor-General and sworn in as Privy Councillors, and Members thereof may be, from time to time, removed by the Governor-General.

All powers under Acts to be exercised by Governor-General with advice of Privy Council or alone.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor-General with the advice, or with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

Provisions referring to Governor-General in Council.

13. The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada.

The federal constitution came into force July 1, 1867

Power of Her Majesty to authorize Governor-General to appoint deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of Canada, and in that capacity to exercise, during the pleasure of the Governor-General such of the powers, authorities, and functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor-General himself of any power, authority or function.

Command of armed forces.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Seat of Government.

16. Until the Queen otherwise directs the Seat of Government of Canada shall be Ottawa.

## IV. Legislative Power.

Constitution of Parliament of Canada.

17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House, styled the Senate, and the House of Commons.

Privileges, etc., of Houses.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.[1]

First Session of Parliament.

19. The Parliament of Canada shall be called together not later than six months after the Union.[2]

Yearly session of Parliament of Canada.

20. There shall be a session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one Session and its first sitting in the next Session.

## The Senate.[3]

Number of Senators.

21. The Senate shall, subject to the provisions of this Act, consist of seventy-two Members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the constitution of the Senate, Canada shall be deemed to consist of three divisions:—

(1) Ontario;

(2) Quebec;

(3) The Maritime Provinces; Nova Scotia and New Brunswick; which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows:—Ontario by Twenty-four Senators, Quebec by Twenty-four Senators, and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the case of Quebec, each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four Electoral Divisions of Lower Canada specified in Schedule A to Chapter I of the Consolidated Statutes of Canada.

Qualifications of Senators.

23. The qualifications of a Senator shall be as follows:—

(1) He shall be of the full age of thirty years;

(2) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick before the Union, or of the Parliament of Canada after the Union:

(3) He shall be legally or equitably seised as of freehold for his own use and benefit of lands or tenements held in free and common soccage, or seised or possessed for his own use and benefit of lands or tenements held in franc-alleu or in roture, within the Province for which he is appointed, of the value of four

[1] For an act amending this section, see No. CLXXX and note.
[2] The first dominion parliament met November 7, 1867.
[3] See No. CXCV for the present arrangement.

thousand dollars, over and above all rents, dues, debts, charges, mortgages, and incumbrances due, or payable out of or charged on or affecting the same:

(4) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities:

(5) He shall be resident in the Province for which he is appointed:

(6) In the case of Quebec he shall have his real property qualification in the Electoral Division for which he is appointed or shall be resident in that division.

Summons of Senator.

24. The Governor-General shall from time to time, in the Queen's name, by Instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator.

Summons of first body of Senators.

25. Such persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.

Addition of Senators in certain cases.

26. If at any time, on the recommendation of the Governor-General, the Queen thinks fit to direct that three or six Members be added to the Senate, the Governor-General may by summons to three or six qualified persons (as the case may be) representing equally the three divisions of Canada, add to the Senate accordingly.[1]

Reduction of Senate to normal number.

27. In case of such addition being at any time made, the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators and no more.

Number of Senators.

28. The number of Senators shall not at any time exceed seventy-eight.

Tenure of place.

29. A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Resignation of place in Senate.

30. A Senator may by writing under his hand, addressed to the Governor-General, resign his place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The place of a Senator shall become vacant in any of the following cases:—

(1) If for two consecutive Sessions of the Parliament he fails to give his attendance in the Senate;

(2) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to a Foreign Power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a Foreign Power;

(3) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter;

(4) If he is attainted of treason or convicted of felony or of any infamous crime;

(5) If he ceases to be qualified in respect of property or residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the Seat of the Government of Canada, while holding an office under that Government requiring his presence there.

Summons on vacancy in Senate.

32. When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor-General shall by summons to a fit and qualified person fill the vacancy.

As to qualifications, etc.

33. If any question arises respecting the qualification of a Senator or a vacancy in the Senate, the same shall be heard and determined by the Senate.

Appointment of Speaker.

34. The Governor-General may from time to time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

Quorum of Senate.

35. Until the Parliament of Canada otherwise provides, the presence of at least fifteen Senators, including the Speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in Senate.

36. Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

[1] This section is due to a suggestion made by the British government that a means ought to be provided in case of deadlock between the senate and the house of commons. In 1873 the governor-general fulfilled the requirements of the section, and the colonial office replied by a refusal, stating, that the crown would not act except when it had been made apparent that a difference had arisen between the two houses of so serious and permanent a character that the government could not be carried on without the crown's intervention, and when it could be shown that the limited creation of senators allowed by the act would apply an adequate remedy. (*Canadian Sessional Papers*, 1877, No. 68.)

*The House of Commons.*

Constitution of House of Commons.

37. The House of Commons shall, subject to the provisions of this Act, consist of one hundred and eighty-one Members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.[1]

Summoning of House of Commons.

38. The Governor-General shall from time to time, in the Queen's name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

Senators not to sit in House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

Electoral Districts of the Four Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:—

1. Ontario.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one Member.

2. Quebec.

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter two of the Consolidated Statutes of Canada, Chapter seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the twenty-third year of the Queen, Chapter one, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one Member.

3. Nova Scotia.

Each of the eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return two members, and each of the other Counties one Member.

4. New Brunswick.

Each of the fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one Member.

Continuance of existing elections laws until Parliament of Canada otherwise provides.

41. Until the Parliament of Canada otherwise provides all laws in force in the several Provinces of the Union, relative to the following matters or any of them, namely:—the qualifications and disqualifications of persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members; the oaths to be taken by Voters; the Returning Officers, their powers and duties, the proceedings at Elections; the periods during which Elections may be continued, the trial of controverted Elections and proceedings incident thereto, the vacating of seats of Members, and the execution of new Writs in cases of seats vacated otherwise than by dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces. Provided that until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British Subject, aged Twenty-one years or upwards, being a householder, shall have a vote.

Writs for first election.

42. For the first Election of Members to serve in the House of Commons, the Governor-General shall cause Writs to be issued by such person, in such form, and addressed to such Returning Officers as he thinks fit.

The person issuing Writs under this Section shall have the like powers as are possessed at the Union by the Officers charged with the issuing of Writs for the

[1] See below, Section 51.

Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Provinces of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like powers as are possessed at the Union by the Officer charged with the Returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

As to casual vacancies.

43. In case a vacancy in the representation in the House of Commons of any Electoral District happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

As to election of Speaker.

44. The House of Commons on its first assembling after a General Election shall proceed with all practicable speed to elect one of its members to be Speaker.

As to filling up vacancy in office of Speaker.

45. In case of a vacancy happening in the office of Speaker by death, resignation, or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be Speaker.

Speaker to preside.

46. The Speaker shall preside at all meetings of the House of Commons.

Provision in case of absence of Speaker.

47. Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the Chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the Member so elected shall, during the continuance of such absence of the Speaker have and execute all the powers, privileges, and duties of Speaker.

Quorum of House of Commons.

48. The presence of at least twenty Members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers, and for that purpose the Speaker shall be reckoned as a Member.

Voting in House of Commons.

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Its duration.

50. Every House of Commons shall continue for five years from the day of the return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General) and no longer.

Decennial readjustment of representation.

51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be readjusted by such authority, in such manner and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:—

(1) Quebec shall have the fixed number of sixty-five members:

(2) There shall be assigned to each of the other Provinces such a number of Members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained);

(3) In the computation of the number of Members for a Province, a fractional part not exceeding one-half of the whole number requisite for entitling the Province to a Member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number:

(4) On any such readjustment the number of Members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of Members for the Province is ascertained at the then latest census to be diminished by one-twentieth part or upwards:

(5) Such readjustment shall not take effect until the termination of the then existing Parliament.

Increase of number of House of Commons.

52. The number of Members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed.

*Money Votes; Royal Assent.*

Appropriation and Tax Bills.

53. Bills for appropriating any part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation of Money Votes.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the appropriation of any part of the Public Revenue, or of any Tax or Impost, to any purpose, that has not been first recom-

mended to that House by Message of the Governor-General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal assent to Bills, etc.

55. Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the Bill for the signification of the Queen's pleasure.

Disallowance by Order-in-Council of Act assented to by Governor General.

56. Where the Governor-General assents to a Bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the day of such signification.

Signification of Queen's pleasure on Bill reserved.

57. A Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's Assent, the Governor-General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

## V. Provincial Constitutions.

### *Executive Power.*

Appointment of Lieutenant-Governors.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by Instrument under the Great Seal of Canada.

Tenure of office of Lieutenant-Governor.

59. A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first Session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by Message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then, within one week after the commencement of the next Session of the Parliament.

Salaries of Lieutenant-Governors.

60. The salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Oaths, etc., of Lieutenant-Governor.

61. Every Lieutenant-Governor shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor-General.

Application of provisions referring to Lieutenant-Governor.

62. The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each Province or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Province, by whatever title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following Officers, namely: the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with, in Quebec, the Speaker of the Legislative Council and the Solicitor-General.

Government of Nova Scotia and New Brunswick.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union, until altered under the authority of this Act.

Powers to be exercised by Lieutenant-

65. All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or

Governor of Ontario or Quebec with advice or alone.

Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice, or with the advice and consent of, or in conjunction with the respective Executive Councils or any Members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.

As to Lieutenant-Governor in Council.

66. The provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the advice of the Executive Council thereof.

As to absence, etc., of Lieutenant-Governor.

67. The Governor-General in Council may from time to time appoint an Administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability.

Seats of Provincial Governments.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

*Legislative Power.*

1. Ontario.

Legislature for Ontario.

69. There shall be a Legislature for Ontario, consisting of the Lieutenant-Governor and of one House, styled the Legislative Assembly of Ontario.

Electoral Districts.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

2. Quebec.

Legislature for Quebec.

71. There shall be a Legislature for Quebec, consisting of the Lieutenant-Governor and of two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Constitution of Legislative Council.

72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant-Governor in the Queen's name by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

Qualification of Legislative Councillors.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Resignation, etc.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

Vacancies.

75. When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant-Governor, in the Queen's name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

Questions as to vacancies, etc.

76. If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant-Governor may, from time to time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec, to be Speaker thereof, and may remove him and appoint another in his stead.

Quorum of Legislative Council.

78. Until the Legislature of Quebec otherwise provides, the presence of at least ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

Voting in Legislative Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal, the decision shall be deemed to be in the negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any Bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the second and third readings of such Bill have been passed in the Legislative Assembly with the concurrence of the majority of the Members representing all those Electoral Divisions or Districts, and the assent shall not be given to such Bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor, stating that it has been so passed.

### 3. Ontario and Quebec.

First Session of Legislatures.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the Union.

Summoning of Legislative Assemblies.

82. The Lieutenant-Governor of Ontario and of Quebec shall, from time to time, in the Queen's name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on election of holders of office.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any office, commission, or employment, permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say:—the Offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.

Continuance of existing election laws.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as Members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at Elections, the periods during which such Elections may be continued, and the trial of controverted Elections and the proceedings incident thereto, the vacating of the seats of Members, and the issuing and execution of new Writs in case of seats vacated otherwise than by dissolution, shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British Subject aged Twenty-one years or upwards, being a householder, shall have a vote.

Duration of Legislative Assemblies.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Québec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

Yearly Session of Legislature.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each Province in one Session and its first sitting in the next Session.

Speaker, quorum, etc.

87. The following provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the Election of a Speaker originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

4. Nova Scotia and New Brunswick.

Constitutions of Legislatures of Nova Scotia and New Brunswick.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5. Ontario, Quebec and Nova Scotia.

First Elections.

89. Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia, shall cause Writs to be issued for the first Election of Members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such Returning Officer as the Governor-General directs, and so that the first Election of a Member of Assembly for any Electoral District or any subdivision thereof shall be held at the same time and at the same places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

6. The Four Provinces.

Application to Legislatures of provisions respecting money votes, etc.

90. The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax Bills, the recommendation of money votes, the assent to Bills, the disallowance of Acts,[1] and the signification of pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

## VI. Distribution of Legislative Powers.

*Powers of the Parliament.*[2]

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

1. The Public Debt and Property:
2. The regulation of Trade and Commerce:
3. The raising of money by any mode or system of Taxation:
4. The borrowing of money on the Public Credit:
5. Postal Service:
6. The Census and Statistics:
7. Militia, Military and Naval Service, and Defence:
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada:
9. Beacons, Buoys, Lighthouses, and Sable Island:
10. Navigation and Shipping:
11. Quarantine and the establishment and maintenance of Marine Hospitals:
12. Sea Coast and Inland Fisheries:
13. Ferries between a Province and any British or Foreign Country, or between two Provinces:
14. Currency and Coinage:
15. Banking, Incorporation of Banks, and the issue of Paper Money:
16. Savings Banks:

[1] For the disallowance of provincial acts, see Kennedy, *Constitution of Canada*, pp. 415 ff. and *Journal of Comparative Legislation*, February, 1924, pp. 81 ff.

[2] For an exhaustive summary of the interpretation by the courts of sections 91 and 92, 93 and 95, see Lefroy, *Canada's Federal System* (1913), and Lefroy and Kennedy, *Treatise on Canadian Constitutional Law* (1918). Since 1918 the interpretation must be sought in the law reports.

17. Weights and Measures:
18. Bills of Exchange and Promissory Notes:
19. Interest:
20. Legal Tender:
21. Bankruptcy and Insolvency:
22. Patents of Invention and Discovery:
23. Copyrights:
24. Indians and Lands reserved for the Indians:
25. Naturalization and Aliens:
26. Marriage and Divorce:
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters:
28. The establishment, maintenance and management of Penitentiaries:
29. Such Classes of Subjects as are expressly excepted in the enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces:

And any matter coming within any of the Classes of Subjects enumerated in this section shall not be deemed to come within the Class of matters of a local or private nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatives of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

Subjects of exclusive Provincial Legislation.

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:—

1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor:
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes:
3. The borrowing of money on the sole credit of the Province:
4. The establishment and tenure of Provincial Offices, and the appointment and payment of Provincial officers:
5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon:
6. The establishment, maintenance, and management of public and reformatory prisons in and for the Province:
7. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Provinces, other than Marine Hospitals:
8. Municipal Institutions in the Province:
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, Local, or Municipal purposes:
10. Local works and undertakings, other than such as are of the following classes:
    (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.
    (*b*) Lines of Steam Ships between the Province and any British or Foreign Country:
    (*c*) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces:
11. The Incorporation of Companies with Provincial Objects:
12. The Solemnization of Marriage in the Province:
13. Property and civil rights in the Province:
14. The Administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including procedure in civil matters in those Courts:
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any Law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this Section:
16. Generally all matters of a merely local or private nature in the Province.

*Education.*

Legislation respecting Education.

93. In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by law in the Province at the Union:

(2) All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a system of separate or Dissentient Schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's Subjects in relation to Education;

(4) In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this Section is not made, or in case any decision of the Governor-General in Council on any appeal under this Section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this Section, and of any decision of the Governor-General in Council under this Section.

*Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.*

Legislation for uniformity of laws in three Provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the Courts in those three Provinces, and from and after the passing of any Act in that behalf, the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the Legislature thereof.

*Agriculture and Immigration.*

Concurrent powers of Legislation respecting Agriculture, etc.

95. In each Province the Legislature may make laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any law of the Legislature of a Province, relative to Agriculture or to Immigration, shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

## VII. Judicature.

Appointment of Judges.

96. The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, etc.;

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

In Quebec.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Tenure of office of Judges of Superior Courts.

99. The Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.

Salaries, etc., of Judges.

100. The salaries, allowances, and pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof

are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.

General Court of Appeal, etc.

101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a General Court of Appeal for Canada, and for the establishment of any additional Courts for the better Administration of the Laws of Canada.

## VIII. Revenues; Debts; Assets; Taxation.

Creation of Consolidated Revenue Fund.

102. All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union, had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

Expenses of Collection, etc.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the costs, charges and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon subject to be reviewed and audited in such manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides.

Interest of Provincial public debts.

104. The annual Interest of the public debts of the several Provinces of Canada, Nova Scotia and New Brunswick at the Union shall form the second charge on the Consolidated Revenue Fund of Canada.

Salary of Governor-General.

105. Unless altered by the Parliament of Canada, the salary of the Governor-General shall be Ten Thousand Pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the third charge thereon.

Appropriation from time to time.

106. Subject to the several payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the public service.

Transfer of Stocks, etc.

107. All Stocks, Cash, Bankers' Balances, and Securities for money belonging to each Province at the time of the Union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the Union.

Transfer of property in Schedule.

108. The Public Works and Property of each Province enumerated in the Third Schedule to this Act shall be the Property of Canada.

Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick, at the Union and all sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.

Assets connected with provincial debts.

110. All Assets connected with such portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be liable to them.

111. Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of Ontario and Quebec.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Assets of Ontario and Quebec.

113. The assets enumerated in the Fourth Schedule to this Act, belonging at the Union to the Province of Canada, shall be the property of Ontario and Quebec conjointly.

Debt of Nova Scotia.

114. Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union Eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Debt of New Brunswick.

115. New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union Seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Payment of interest to Nova Scotia and New Brunswick.

116. In case the public debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million dollars respectively, they shall respectively receive, by half-yearly payments in advance from the Government of Canada, interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

Provincial public property.

117. The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for Fortifications or for the defence of the country.

Grants to Provinces.

118. The following sums shall be paid yearly by Canada to the several Provinces for the support of their Governments and Legislatures:—

| | *Dollars* |
|---|---|
| Ontario . . . . . | Eighty thousand |
| Québec . . . . . | Seventy thousand |
| Nova Scotia . . . . | Sixty thousand |
| New Brunswick . . . . | Fifty thousand |
| | Two hundred and Sixty thousand; |

and an annual grant in aid of each Province shall be made, equal to Eighty cents per head of the population as ascertained by the census of One thousand eight hundred and Sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two Provinces amounts to Four hundred thousand souls, at which rate such grant shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such grants, as against any Province, all sums chargeable as interest on the public debt of that Province in excess of the several amounts stipulated in this Act.

Further grants to New Brunswick.

119. New Brunswick shall receive, by half-yearly payments in advance from Canada, for the period of ten years from the Union, an additional allowance of Sixty-three thousand dollars per annum; but as long as the public debt of that Province remains under Seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of Sixty-three thousand dollars.

Form of payments.

120. All Payments to be made under this Act, or in discharge of liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor-General in Council.

Canadian manufactures, etc.

121. All articles of the growth, produce, or manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Customs and Excise Laws.

122. The Customs and Excise Laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

Exportation and Importation as between two Provinces.

123. Where Customs Duties are, at the Union, leviable on any goods, wares, or merchandises in any two Provinces, those goods, wares, and merchandises may from and after the Union, be imported from one of those Provinces into the other of them, on proof of payment of the Customs Duty leviable thereon in the Province of exportation, and on payment of such further amount (if any) of Customs Duty as is leviable thereon in the Province of importation.

Lumber dues in New Brunswick.

124. Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues [1] provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the amount of such dues; but the lumber of any of the Provinces other than New Brunswick shall not be subject to such dues.

Exemption of public Lands.

125. No Lands or Property belonging to Canada or any Province shall be liable to taxation.

Provincial Consolidated Revenue Fund.

126. Such portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union power of appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

[1] These dues were abolished under the treaty of Washington, section xxxi, 1871. An act was passed by the Dominion parliament (36 Victoria, c. 41), providing compensation for New Brunswick from the Dominion.

## IX. Miscellaneous Provisions.

### *General.*

As to Legislative Councillors of Province becoming Senators.

127. If any person being at the passing of this Act, a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand, addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be) accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a place in the Senate, shall thereby vacate his Seat in such Legislative Council.

Oath of Allegiance, etc.

128. Every Member of the Senate or House of Commons of Canada shall, before taking his Seat therein, take and subscribe before the Governor-General or some person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall, before taking his Seat therein, take and subscribe before the Lieutenant-Governor of the Province, or some person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor-General, or some person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continuance of existing Laws, Courts, Officers, etc.

129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under this Act.

Transfer of Officers to Canada.

130. Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

Appointment of new Officers.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from time to time appoint such Officers as the Governor-General in Council deems necessary or proper for the effectual execution of this Act.

Treaty obligations.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French languages.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

### *Ontario and Quebec.*

Appointment of Executive Officers for Ontario and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint, under the Great Seal of the Province, the following Officers, to hold office during pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province,

the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec the Solicitor-General; and may, by order of the Lieutenant-Governor in Council, from time to time prescribe the duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof; and may also appoint other and additional Officers to hold office during pleasure, and may from time to time prescribe the duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.

Powers, duties, etc., of Executive Officers.

135. Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities, or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver-General, by any Law, Statute, or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada as well as those of the Commissioner of Public Works.

Great Seals.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construction of temporary Acts.

137. The words 'and from thence to the end of the then next ensuing Session of the Legislature,' or words to the same effect used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject-matter of the Act is within the powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the subject-matter of the Act is within the powers of the same as defined by this Act.

As to errors in names.

138. From and after the Union the use of the words 'Upper Canada' instead of 'Ontario,' or 'Lower Canada' instead of 'Quebec,' in any Deed, Writ, Process, Pleading, Document, Matter, or Thing shall not invalidate the same.

As to issue of Proclamations before Union to commence after Union.

139. Any Proclamation under the Great Seal of the Province of Canada, issued before the Union, to take effect at a time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the Union had not been made.

As to issue of Proclamations after Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject-matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation the same and the several matters and things therein proclaimed shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

Penitentiary.

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Arbitration respecting Debts, etc.

142. The division and adjustment of the Debts, Credits, Liabilities, Properties, and Assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

Division of records.

143. The Governor-General in Council may from time to time order that such and so many of the records, books and documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy

thereof or extract therefrom, duly certified by the Officer having charge of the original thereof, shall be admitted as evidence.

144. The Lieutenant-Governor of Quebec may from time to time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those parts of the Province of Quebec in which Townships are not then already constituted, and fix the metes and bounds thereof. Constitution of Townships in Quebec.

## X. Intercolonial Railway.

145. Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within Six months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed. Duty of Government and Parliament of Canada to make railway herein described.

## XI. Admission of Other Colonies.

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.[1] Power to admit Newfoundland, etc., into the Union.

147. In case of the admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a representation, in the Senate of Canada, of Four Members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland the normal number of Senators shall be Seventy-six and their maximum number shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from Twelve to Ten Members respectively, and the representation of each of those Provinces shall not be increased at any time beyond Ten, except under the provisions of this Act, for the appointment of Three or Six additional Senators under the direction of the Queen. As to the representation of Newfoundland and Prince Edward Island in Senate.

*Note.*—The schedules of the B.N.A. Act are omitted as unnecessary for the purposes of this volume.

[1] Cf. Nos. CLXXVIII and CLXXXVII. For the admission of Rupert's Land and the North-Western Territory, see Nos. CLXXIV and CLXXVI. For the admission of British Columbia and Prince Edward Island, see Nos. CLXXVII and CLXXIX.

# SEVENTH PERIOD

## 1867–1929

## SEVENTH PERIOD

### 1867–1929

No attempt has been made to illustrate the workings of the British North America Act from the mass of case law which has gathered round it. The beginner will find an excellent survey of it up to 1918 in Lefroy and Kennedy, *Short Treatise on Canadian Constitutional Law* (Toronto, 1918). The subsequent leading cases must be followed in the reports. In this period documents are inserted dealing with the territorial completion of the Dominion and the organization of new provinces (Nos. CLXXIV, CLXXV, CLXXVI, CLXXVII, CLXXVIII, CLXXIX, CLXXXIX, CXC); with the office of governor-general (Nos. CLXXXI, CLXXXII, CLXXXIII, CLXXXIV); with the constitution of the senate (No. CXCV); with the nature and constitution of the imperial conferences (Nos. CXCI and CXCIII); with the treaty-making power (Nos. CLXXXVIII, CXCII, and CCI); with Canadian representation in London and in foreign countries (Nos. CLXXXV, CLXXXVI, CXCIX, CCIII); with the development of nationhood (Nos. CXCVII, CXCVIII, CCII, CCV); with Canadian nationals and citizens (No. CC). For obvious reasons the covenant of the league of nations has been added.

## CLXXIV

## RUPERT'S LAND ACT, 1868.

(31–32 Victoria, c. 105.)

*An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada.*

[31st July, 1868.]

Recital of the Charter of Hudson's Bay Co., 22 Car. 22.

WHEREAS by certain letters Patent granted by His late Majesty King Charles the Second in the Twenty-second Year of His Reign certain Persons therein named were incorporated by the Name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain Lands and Territories, Rights of Government, and other Rights, Privileges, Liberties, Franchises, Powers, and Authorities, were thereby granted or purported to be granted to the said Governor and Company in His Majesty's Dominion in North America:

And whereas by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the Advice of Her Majesty's most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North Western Territory, or either of them, into the Union on such Terms and Conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the provisions of the said Act: [1]

Recital of Agreement of surrender.

And whereas for the Purpose of carrying into effect the Provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such Terms as Her Majesty thinks fit to approve, it is expedient that the said Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, Her Heirs and Successors, upon such Terms and Conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Short Title.

1. This Act may be cited as "Rupert's Land Act, 1868."

Definition of "Rupert's Land."

2. For the Purposes of this Act the Term "Rupert's Land" shall include the whole of the Lands and Territories held or claimed to be held by the said Governor and Company.

Power of Her Majesty to accept surrender of lands etc., of the Company on certain terms.

It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty by any Instrument under Her Sign Manual and Signet to accept a Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such Surrender shall not be accepted by Her Majesty until the Terms and Conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both Houses of the Parliament of Canada in pursuance of the One hundred and forty-sixth Section of the British North America Act, 1867; and that the said Surrender and Acceptance thereof shall be null and void unless within a Month from the Date of Such Acceptance Her Majesty does by Order in Council under the Provisions of the said last recited Act admit Rupert's Land into the said Dominion; provided further, that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom.

[1] See No. CLXXIII, section 146. For the necessary address, see *Journals of the House of Commons*, 1867–8, vol. i, pp. 67 ff. For a valuable discussion see Martin, Chester, 'The first "New Province" of the Dominion' (*Canadian Historical Review*, i, pp. 354 ff.).

Extinguishment of all rights of the Company.

4. Upon the Acceptance by Her Majesty of such Surrender all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, Franchises, Powers, and Authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.

Power of Her Majesty by Order in Council to admit Rupert's Land into and form part of the Dominion of Canada.

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a Date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada from the Date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good government of Her Majesty's Subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the Powers, Authorities, and Jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting within the said Limits, shall continue in full force and effect therein.

Jurisdiction of present Courts and Officers continued.

## CLXXV

## THE MANITOBA ACT, 1870

(33 Victoriae, c. 3.) [1]

*An Act to amend and continue the Act* 32 *and* 33 *Victoriae, chapter* 3*; and to establish and provide for the Government of Manitoba.*

[Assented to May 12th, 1870.]

Preamble.

Whereas it is probable that Her Majesty, The Queen, may, pursuant to the British North America Act, 1867, be pleased to admit Rupert's Land and the North-Western Territory [2] into the Union or Dominion of Canada, before the next Session of the Parliament of Canada:

And whereas it is expedient to prepare for the transfer of the said Territories to the Government of Canada at the time appointed by the Queen for such admission:

And whereas it is expedient also to provide for the organization of part of the said Territories as a province, and for the establishment of a Government therefor, and to make provision for the Civil Government of the remaining part of the said Territories, not included within the limits of the Province:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Province to be formed out of N.-W. territory when united to Canada.

1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under the authority of the 146th Section of the British North America Act, 1867, shall by Order in Council in that behalf, admit Rupert's Land and the North-Western Territories into the Union or Dominion of Canada, there shall be formed out of the same a province, which shall be one of the Provinces of the Dominion of Canada, and which shall be called the Province of Manitoba, and be bounded as follows: that is to say, commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude,—thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-Western Territory) to the meridian of ninety-nine degrees of west longitude,—thence due north along the said meridian of ninety-nine degrees west longitude to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude,—thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before-

Its name and boundaries.

[1] This act was confirmed by the British North America Act, 1871 (No. CLXXVIII). See for some notice of the circumstances under which each of the new provinces was admitted into the Dominion: *Attorney-General of Prince Edward Island* v. *Attorney-General of Dominion*, [1905] A. C. 37.

[2] See note on section 146, B.N.A. Act, 1867 (No. CLXXIII) and No. CLXXVI.

mentioned meridian of ninety-six degrees west longitude,—thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning.

Certain provisions of B.N.A. Act 1867, to apply to Manitoba.

2. On, from and after the said day on which the order of the Queen in Council shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or, by reasonable intendment may be held to be specially applicable to or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the provinces originally united by the said Act.

Representation in the Senate.

3. The said Province shall be represented in the Senate of Canada by two Members, until it shall have, according to decennial census, a population of fifty thousand souls, and from thenceforth it shall be represented therein by three Members, until it shall have, according to decennial census, a population of seventy-five thousand souls, and from thenceforth it shall be represented therein by four Members.

Representation in the House of Commons.

4. The said Province shall be represented, in the first instance, in the House of Commons in Canada, by four Members and for that purpose shall be divided by proclamation of the Governor General, into four Electoral Districts each of which shall be represented by one Member: Provided that on the completion of the census in the year 1881, and of each decennial census afterwards the representation of the said Province shall be readjusted according to the provisions of the fifty-first section of the British North America Act, 1867.

Qualification of voters and members.

5. Until the Parliament of Canada otherwise provides, the qualifications of voters at Elections of Members of the House of Commons shall be the same as for the Legislative Assembly hereinafter mentioned: And no person shall be qualified to be elected, or to sit and vote as a Member for any Electoral District, unless he is a duly qualified voter within the said Province.

Lieutenant-Governor.

6. For the said Province there shall be an Officer styled the Lieutenant Governor, appointed by the Governor General in Council by instrument under the Great Seal of Canada.

Executive Council.

7. The Executive Council of the Province shall be composed of such persons, and under such designations, as the Lieutenant Governor shall from time to time think fit: and, in the first instance, of not more than five persons.

Seat of Government.

8. Unless and until the Executive Government of the Province otherwise directs, the seat of Government of the same shall be at Fort Garry, or within one mile thereof.

Legislature.

9. There shall be a Legislature for the Province, consisting of the Lieutenant Governor, and of two Houses, styled respectively, the Legislative Council of Manitoba, and the Legislative Assembly of Manitoba.

Legislative Council.

10. The Legislative Council shall, in the first instance, be composed of seven Members, and after the expiration of four years from the time of the first appointment of such seven Members, may be increased to not more than twelve Members. Every Member of the Legislative Council shall be appointed by the Lieutenant-Governor in the Queen's name, by Instrument under the Great Seal of Manitoba, and shall hold office for the term of his life, unless and until the Legislature of Manitoba otherwise provides under the British North America Act, 1867.

Members and their appointment, etc.

Speaker.

11. The Lieutenant-Governor may, from time to time, by Instrument under the Great Seal, appoint a member of the Legislative Council to be Speaker thereof, and may remove him and appoint another in his stead.

Quorum.

12. Until the Legislature of the Province otherwise provides, the presence of a majority of the whole number of the Legislative Council, including the Speaker shall be necessary to constitute a meeting for the exercise of its powers.

Voting. Equality of votes.

13. Questions arising in the Legislative Council shall be decided by a majority of voices, and the Speaker shall in all cases have a vote and when the voices are equal the decisions shall be deemed to be in the negative.

Legislative Assembly.

14. The Legislative Assembly shall be composed of twenty-four members to be elected to represent the Electoral Divisions into which the said Province may be divided by the Lieutenant-Governor as hereinafter mentioned.

Quorum.

15. The presence of a majority of Members of the Legislative Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be recognized as a Member.

Electoral Divisions.

16. The Lieutenant-Governor shall (within six months of the date of the Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union), by Proclamation under the Great Seal, divide the said Province into twenty-four Electoral Divisions, due regard being had to existing Local Divisions and population.

Qualification of voters.

17. Every male person shall be entitled to vote for a Member, to serve in the Legislative Assembly for any Electoral Division, who is qualified as follows, that is to say, if he is:—

(1) Of the full age of twenty-one years, and not subject to any legal incapacity:

(2) A subject of Her Majesty by birth or naturalization:

(3) And a *bonâ fide* householder within the Electoral Division, at the date of the Writ of Election for the same, and has been a *bonâ fide* householder for one year next before the said date; or,

Special,—for first election only.

(4) If, being of the full age of twenty-one years and not subject to any legal incapacity and a subject of Her Majesty by birth or naturalization, he was, at the time within twelve months prior to the passing of this Act, and (though in the interim temporarily absent) is at the time of such election a *bonâ fide* householder, and was resident within the Electoral Division at the date of the Writ of Election for the same:

Proviso.

But this fourth sub-section shall apply only to the first election to be held under this Act for Members to serve in the Legislative Assembly aforesaid.

Proceedings at first election, &c.,—how regulated.

18. For the first election of Members to serve in the Legislative Assembly, and until the Legislature of the Province otherwise provides, the Lieutenant-Governor shall cause writs to be issued, by such person, in such form, and addressed to such Returning Officers as he thinks fit; and for the first election, and until the Legislature of the province otherwise provides, the Lieutenant-Governor shall, by proclamation, prescribe and declare the oaths to be taken by voters, the powers and duties of Returning and Deputy Returning Officers, the proceedings to be observed at such election, and the period during which such election may be continued, and such other provisions in respect to such first election as he may think fit.

Duration of Legislative Assembly.

19. Every Legislative Assembly shall continue for four years from the date of the return of the writs for returning the same (subject nevertheless to being sooner dissolved by the Lieutenant-Governor), and no longer; and the first Session thereof shall be called at such time as the Lieutenant-Governor shall appoint.

Sessions at least once a year.

20. There shall be a Session of the Legislature once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in one Session and its first sitting in the next Session.

Certain provisions of B. N. A. Act 1867 to apply.

21. The following provisions of the British North America Act, 1867, respecting the House of Commons of Canada, shall extend and apply to the Legislative Assembly, that is to say:—Provisions relating to the election of a Speaker, originally, and on vacancies,—the duties of the Speaker—the absence of the Speaker and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to the Legislative Assembly.

Legislation touching schools subject to certain provisions.

22. In and for the Province, the said Legislature may exclusively make laws in relation to Education subject and according to the following provisions:—

(1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:

(2) An appeal shall lie to the Governor-General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:

Power reserved to Parliament.

(3) In case any such Provincial Law, as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section.

English and French languages to be used.

23. Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses: and either of those languages may be used by any person or in any pleading or Process, in or issuing

from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

Interest allowed to the Province on a certain amount of the debt of Canada.

24. Inasmuch as the Province is not in debt, the said Province shall be entitled to be paid and to receive from the Government of Canada by half-yearly payments in advance, interest at the rate of five per centum per annum on the sum of four hundred and seventy-two thousand and ninety dollars.

Subsidy to the Province for support of Government, and in proportion to its population.

25. The sum of thirty thousand dollars shall be paid yearly by Canada to the Province, for the support of its Government and Legislature, and an annual grant in aid of the said Province shall be made, equal to eighty cents per head of the population estimated at seventeen thousand souls; and such grant of eighty cents per head shall be augmented in proportion to the increase of population, as may be shewn by the census that shall be taken thereof in the year one thousand one hundred and eighty-one, and by each subsequent decennial census, until its population amounts to four hundred thousand souls, at which amount such grant shall remain thereafter, and such sum shall be in full settlement of all future demands on Canada, and shall be paid half-yearly, in advance, to the said Province.

Canada assumes certain expenses.

26. Canada will assume and defray the charges for the following services:—

(1) Salary of the Lieutenant-Governor.

(2) Salaries and allowances of the Judges of the Superior and District or County Courts.

(3) Charges in respect of the Department of the Customs.

(4) Postal Department.

(5) Protection of Fisheries.

(6) Militia.

(7) Geographical Survey.

(8) The Penitentiary.

General provision.

(9) And such further charges as may be incident to and connected with the services which, by the British North America Act, 1867, appertain to the General Government, and as are or may be allowed to the other Provinces.

Customs duties.

27. The Customs duties now by law chargeable in Rupert's Land, shall be continued without increase for the period of three years from and after the passing of this Act, and the proceeds of such duties shall form part of the Consolidated Revenue Fund of Canada.

Customs laws.

28. Such provisions of the Customs Laws of Canada (other than such as prescribe the rate of duties payable) as may be from time to time declared by the Governor-General in Council to apply to the Province of Manitoba shall be applicable thereto, and in force therein accordingly.

Inland Revenue laws and duties.

29. Such provisions of the Laws of Canada respecting the Inland Revenue, including those fixing the amount of duties, as may be from time to time declared by the Governor-General in Council applicable to the said province shall apply thereto, and be in force therein accordingly.

Ungranted lands vested in the Crown for Dominion purposes.

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.

Provisions as to Indian title.

31. And whereas it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted that under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council shall from time to time determine.

Grant for half-breeds.

Quieting titles.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:—

Grants by H. B. Company.

(1) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

The same. (2) All grants of estates less than freehold in land made by the Hudson's Bay Company, up to the 8th day of March aforesaid, shall if required by the owner, be converted into an estate in freehold by grant from the Crown.

Titles by occupancy with permission. (3) All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

By peaceable possession. (4) All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

Lieutenant-Governor to make provisions under Order in Council. (5) The Lieutenant-Governor is hereby authorized under regulations to be made from time to time by the Governor General in Council to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and rights of cutting Hay held and enjoyed by the Settlers in the Province, and for the commutation of the same by grants of land from the Crown.

Governor in Council to appoint form, &c., of grants. 33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the Canada Gazette shall have the same force and effect as if it were a portion of this Act.

Rights of H. B. Company not affected. 34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company as contained in the conditions under which that Company surrendered Rupert's Land to her Majesty.[1]

Lieutenant-Governor to govern N.-W. territory for Canada. 35. And with respect to such portion of Rupert's Land and the North-Western Territory as is not included in the Province of Manitoba, it is hereby enacted that the Lieutenant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories and subject to the provisions of the Act in the next section mentioned.

Act 32 and 33 V., c. 3, extended and continued. 36. Except as hereinbefore is enacted and provided, the Act of the Parliament of Canada passed in the now last session thereof, and entitled "An Act for the Temporary Government of Rupert's Land and the North-Western Territory when united with Canada" is hereby re-enacted, extended and continued in force until the first day of January, 1871, and until the end of the Session of Parliament then next succeeding.

## CLXXVI

## ORDER OF HER MAJESTY IN COUNCIL ADMITTING RUPERT'S LAND AND THE NORTH-WESTERN TERRITORY INTO THE UNION, 1870

[Trans: *Revised Statutes of Canada*, 1927, vol. v.]

At the Court at *Windsor, the 23rd day of June, 1870.*

PRESENT

The QUEEN'S Most Excellent Majesty.
Lord President.
Lord Privy Seal.
Lord Chamberlain.
Mr. Gladstone.

Whereas by the British North America Act, 1867,[2] it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had

[1] See No. CLXXVI. [2] No. CLXXIII.

been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the Schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government upon the terms and conditions therein stated:

And whereas by the Rupert's Land Act, 1868,[1] it was (amongst other things) enacted that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called the Company) to surrender to Her Majesty, and for Her Majesty, by any Instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by certain Letters Patent therein recited to the said Company within Rupert's Land, upon such terms and conditions as should be agreed upon by and between Her Majesty and the said Company; provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th Section of the British North America Act, 1867.

And it was by the same Act further enacted that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada;

And whereas a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty praying that Her Majesty will be pleased, under the provisions of the hereinbefore recited Acts, to unite Rupert's Land on the terms and conditions expressed in certain Resolutions therein referred to and approved of by Her Majesty, of which said Resolutions and Address copies are contained in the Schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the hereinbefore first recited Address, and also approved of by Her Majesty:

And whereas a draft surrender has been submitted to the Governor General of Canada containing stipulations to the following effect, viz:—

1. The sum of 300,000*l.* (being the sum hereinafter mentioned) shall be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of 5 per cent per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits, shall be as follows:

| | Acres. |
|---|---|
| Upper Fort Garry and town of Winnipeg, including the inclosed park around shop and ground at the entrance to the town . . . | 500 |
| Lower Fort Garry (including the farm the Company now have under cultivation) . . . . . | 500 |
| White Horse Plain . . . . . | 500 |

3. The deduction to be made as hereinafter mentioned from the price of the materials of the Electric Telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the Company in charge of the depots where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months of such acceptance, with interest at the rate of 5 per cent per annum on the amount of such price, computed from the date of such acceptance until the time of payment:

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor General in accordance with a Report from the Committee of the Queen's Privy Council for Canada; but

it was not expedient that the said stipulations, not being contained in the aforesaid Address, should be included in the surrender by the said Company to Her Majesty of their rights aforesaid or in this Order in Council.

And whereas the said Company did by deed under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the Schedule to this Order annexed, marked C, surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said Letters Patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted or purported to be granted to the said Company by the said Letters Patent:

And whereas such surrender has been duly accepted by Her Majesty, by an instrument under her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight hundred and seventy:

It is hereby Ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said Territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second address of the Parliament of Canada, and approved of by Her Majesty as aforesaid:—

1. Canada is to pay to the Company 300,000*l.*, when Rupert's Land is transferred to the Dominion of Canada.

2. The Company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the Schedule of the aforesaid Deed of Surrender. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed [10] acres round Upper Fort Garry, [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.

5. The Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duties on goods introduced by them previous to the surrender.

12. Canada is to take over the materials of the electric telegraph at cost price —such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under agreements of Messrs. Vankoughnet and Hopkins to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honorable Earl Granville, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

## SCHEDULES

### Schedule (A)

Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada.

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:—

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire, if the Dominion of Canada, constituted under the provisions of the British North America Act, 1867, were extended westward to the shores of the Pacific Ocean.

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River districts; the development of the mineral wealth which abounds in the region of the Northwest; and the extension of commercial intercourse through British possessions in America from the Atlantic to the Pacific, are alike dependent on the establishment of a stable government for the maintenance of law and order in the North-Western Territories.

That the welfare of a sparse and widely scattered population of British subjects of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of this Dominion.

That the 146th section of the British North America Act, 1867, provides for

the admission of Rupert's Land and the North-Western Territory, or either of them, into union with Canada, upon the terms and conditions to be expressed in addresses from the Houses of Parliament of this Dominion to your Majesty, and which shall be approved of by your Majesty in Council.

That we do therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honorable Privy Council, to unite Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good Government; and we most humbly beg to express to your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company or individual within the same shall be respected, and placed under the protection of Courts of competent jurisdiction.

And furthermore that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

All of which we humbly pray your Majesty to take into your Majesty's Most gracious and favourable consideration.

The Senate, Tuesday, December 17th, 1867.

(Signed), JOSEPH CAUCHON, Speaker.

House of Commons, Monday, December 16th, 1867.

(Signed), JAMES COCKBURN, Speaker.

SCHEDULE (B).

1. *Resolutions.*

May 28th, 1869.

*Resolved*,—That the Senate and Commons of the Dominion of Canada, during the first session of the first Parliament of Canada, adopted an Address to Her Majesty, praying that Her Majesty would be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the provisions of 146th section of The British North America Act, 1867; and on the terms specified in the Address, to unite Rupert's Land and the North-west Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Her Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of government and legislation as regard those territories.

*Resolved*,—That the Joint Address of the Senate and Commons of Canada was duly laid at the foot of the throne, and that Her Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies, to the Governor General of Canada, under date of the 23rd of April, 1868, signified Her willingness to comply with the prayer of the said Address; but She was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act[1] was subsequently passed by the Imperial Parliament, and received Her Majesty's assent on the 31st July, 1868.

*Resolved*,—That by despatch dated 8th August, 1868, from the Honourable Secretary of State for the Colonies, the Governor-General was informed, that in pursuance of the powers conferred by the Act for the surrender of the Hudson Bay Territories to Her Majesty, he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an order of the Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., were appointed a Delegation to England, to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-west Territory into union with Canada, either with or without Rupert's Land, as it might be found practicable and expedient.

No. CLXXIV.

*Resolved*,—That the Delegates proceeded on their mission to England and entered into negotiations with his Grace the Duke of Buckingham and Chandos, the Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia. That terms of agreement were conditionally assented to by the Delegates on behalf of the Dominion, and on their return to Canada were submitted with a Report dated 8th May, 1869, which was approved by His Excellency the Governor in Council, on the 14th day of the same month.

*Resolved*,—That the Senate will be prepared to concur in accepting the transfer of the territorial and other rights of the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada, by the Hon. Sir George Et. Cartier, Baronet, and the Hon. William MacDougall, C.B., and on behalf of the Hudson's Bay Company, by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the Delegates by Direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following:—

"*Terms, as stated in the Letter from Sir Frederic Rogers, of March, 1869.*

"1. The Hudson's Bay Company to surrender to Her Majesty all the rights of Government, property, etc., in Rupert's Land which are specified in 31 & 32 Vict., cap. 105, sec. 4; and also all similar rights in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia.

"2. Canada is to pay to the Company 300,000*l*., when Rupert's Land is transferred to the Dominion of Canada.

"3. The Company may, within twelve months of the surrender, select a block of land adjoining each of its stations, within the limits specified in Article 1.

"4. The size of the blocks not to exceed acres in the Red River Territory, and the aggregate extent of the blocks is not to exceed 50,000 acres.

"5. So far as the configuration of the country admits, the blocks are to be in the shape of parallelograms, of which the length is not more than double the breadth.

"6. The Hudson's Bay Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt in which land is set out for settlement, select grants of land, not exceeding one-twentieth of the land so set out. The blocks so granted to be determined by lot, and the Hudson's Bay Company to pay a rateable share of the survey expenses, not exceeding an acre.

"7. For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

"8. All titles to land up to the 8th March, 1869, conferred by the Company, are to be confirmed.

"9. The Company is to be at liberty to carry on its trade without hindrance, in its corporate capacity and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by them previous to the surrender.

"10. Canada is to take over the materials of the electric telegraph at cost price, such price including transport but not including interest for money, and subject to a deduction for ascertained deteriorations.

"11. The Company's claim to land under agreement of Messrs. Vankoughnet and Hopkins to be withdrawn.

"12. The details of this arrangement, including the filling up the blanks in Articles 4 and 6, to be settled at once by mutual agreement."

"MEMORANDUM

"*Details of Agreement between the Delegates of the Government of the Dominion, and the Directors of the Hudson's Bay Company.*

"1. It is understood that, in surrendering to Her Majesty, all the rights, &c., of the Company in any part of British North America not comprised in Rupert's Land, Canada or British Columbia, the Company are to retain the posts they actually occupy in the North West Territory.

"2. It is understood that it will be a sufficient act of selection under Article III., that the Company should, within twelve months, name the number of acres which they will require adjoining each post. The actual survey to be proceeded with, with all convenient speed.

"3. It is understood that in the Red River Settlement, the size of the blocks to be retained round Upper Fort Garry shall not exceed (10) acres; and that round Lower Fort Garry shall not exceed (300) acres.

"4. It is understood that a list of the stations round which the Company will require blocks of land, with the size of the blocks they will require, shall be made out forthwith, and communicated to the Canadian Ministers.

"5. It is understood that Article V, shall be construed to mean that the blocks shall front the river or road, by which means of access are provided, and shall be approximately in the form of parallelograms, of which the frontage shall not be more than half the depth.

"6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

"7. It is understood that the Blank in Article 6 shall be filled up with 8 cents (Canadian).

"8. It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government, in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them.

(Signed.) "STAFFORD H. NORTHCOTE.
"G. E. CARTIER.
"W. MACDOUGALL.

"March 22, 1869.

"*Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.*

"Inasmuch as the northern branch of the Saskatchewan River is the northern boundary of the Fertile Belt, and therefore any land on the northern bank is not within the territory of which the Company are to have one-twentieth part, it is understood that, in forming the townships abutting on the northern bank, the Company shall be at liberty to take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

"It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.

"It is understood that, in laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block: but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

"It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

(Signed.) "GEO. ET. CARTIER.
"STAFFORD NORTHCOTE.

"London, March 29, 1869."

*Resolved*,—That this House learns with satisfaction, by letter from the Under-Secretary of State for the Colonies, of 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, Her Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of 300,000*l*., the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

*Resolved*,—That the Senate will be ready to concur with the House of Commons in an Address to Her Majesty, that she will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the 146th clause of The British North America Act, 1867, and the provisions of the Imperial Act, 31 & 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing Resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in the joint Address of the Senate and the House of Commons of Canada, adopted during the first session of the first Parliament of Canada, and hereinbefore referred to.

*Resolved*,—That upon the transference of the territories in question to the Canadian Government, it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer.

*Resolved*,—That the Governor in Council be authorized and empowered to arrange any details, that may be necessary to carry out the terms and conditions of the above agreement.

### *2. Address.*

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign*,

WE, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:—

That, during the first session of the first Parliament of this Dominion, we adopted an Address to your Majesty, praying that your Majesty would be graciously pleased, by and with the advice of your Majesty's Most Honourable Privy Council under the provisions of the 146th Section of the British North America Act, 1867, and on the terms specified in that Address, to unite Rupert's Land and the North-West Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring your Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of Government and legislation as regards those territories.

That our joint Address was duly laid at the foot of the Throne, and that your Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies to the Governor General of Canada, under date of the 23rd April, 1868, signified your Majesty's willingness to comply with the prayer of the said Address, but that your Majesty was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received your Majesty's assent on the 31st July, 1868.

That by a despatch dated 8th August, 1868, from the Honourable the Secretary of State for the Colonies, the Governor General was informed that in pursuance of the powers conferred by the Act for the surrender of the Husdon's Bay territories to your Majesty he proposed to enter into negotiations with the company as to the terms of such surrender, whereupon, under authority of an Order of the Governor-General in Council, of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., were appointed a delegation to England to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North West Territory into union with Canada either with or without Rupert's Land, as might be found practicable and expedient.

That the delegates proceeded on their mission to England, and entered into

negotiations with his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada by the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following:—

"*Terms, as stated in the Letter from Sir Frederic Rogers of 9th March, 1869.*

[*These terms as set forth on page 649* supra *are here recited at length.*]

"MEMORANDUM

"*Details of Agreement between the Delegates of the Government of the Dominion and the Directors of the Hudson's Bay Company.*

[*This memorandum as set forth on page 650* supra *is here recited at length.*]

"*Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.*

[*This Memorandum as set forth on page 650* supra *is here recited at length.*]

That we learn with satisfaction by letter from the Under-Secretary of State for the Colonies, of the 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of the 17th June, 1865, your Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of 300,000*l.* the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

That upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer, and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

We therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, under the 146th clause of the British North America Act, 1867, and the provisions of the Imperial Act 31 and 32 Vict. cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing resolutions and also to unite the North-Western Territory with the Dominion of Canada as prayed for by and on the terms and conditions contained in our joint Address adopted during the first session of the first Parliament of this Dominion, and hereinbefore referred to.

The Senate, Monday, May 31, 1869.

(Signed,) JOSEPH CAUCHON, Speaker.

House of Commons, Ottawa, May 29, 1869.

(Signed,) JAMES COCKBURN, Speaker.

## SCHEDULE (C).

The Governor and Company of Adventurers of England trading into Hudson's Bay to HER MAJESTY QUEEN VICTORIA.

### DEED OF SURRENDER

To all whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England, trading into Hudson's Bay, send greeting.

WHEREAS the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England, trading into Husdon's Bay," by Letters Patent granted by His late Majesty King

Charles the Second in the twenty-second year of his reign, whereby His said Majesty granted unto the said company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's Plantations or Colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises saving the faith, allegiance and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors, such rights of Government and other rights, privileges and liberties, franchises, powers and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers, and authorities thereby granted; and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas by the British North America Act, 1867, it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on address from the Houses of Parliament of Canada, to admit Rupert's Land and the North Western Territory or either of them into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas, by the Rupert's Land Act, 1868, it is enacted (amongst other things) that for the purposes of that Act the term "Rupert's Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada, in pursuance of the 146th Section of the British North America Act, 1867, and that upon the acceptance by Her Majesty of such surrender, all rights of Government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the Rupert's Land Act, 1868, contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-

mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows (that is to say):—

1. The Canadian Government shall pay to the Company the sum of 300,000*l.* sterling when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents whether in Rupert's Land or any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America, not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.

5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last article the fertile belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the Northern Branch of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purpose of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.

8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is to be understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles of land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity; and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.

12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Compnay shall be relieved of all responsibility in respect of them.

And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated:

Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the Rupert's Land Act, 1868, and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof, the Governor and Company of Adventurers of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, One thousand eight hundred and sixty-nine.

## THE SCHEDULE ABOVE REFERRED TO

Northern Department, Rupert's Land

| *District* | *Post* | *Acres of Land* | |
|---|---|---|---|
| English River ..... | Isle à la Crosse | 50 | |
| | Rapid River ..... | 5 | |
| | Portage La Loche ..... | 20 | say 10 acres each end of |
| | Green Lake ..... | 100 | portage |
| | Cold Lake ..... | 10 | |
| | Deer's Lake ..... | 5 | |
| | | 190 | acres in English River Dist. |
| Saskatchewan ..... | Edmonton House ..... | 3,000 | |
| | Rocky Mountain House . | 500 | |
| | Fort Victoria ..... | 3,000 | |
| | St. Paul ..... | 3,000 | |
| | Fort Pitt..... | 3,000 | |
| | Battle River..... | 3,000 | |
| | Carlton House ..... | 3,000 | |
| | Fort Albert ..... | 3,000 | |
| | Whitefish Lake ..... | 500 | |
| | Lac La Biche ..... | 1,000 | |
| | Fort Assiniboine ..... | 50 | |
| | Lesser Slave Lake ..... | 500 | |
| | Lac St. Anne ..... | 500 | |
| | Lac La Nun ..... | 500 | |
| | St. Albert ..... | 1,000 | |
| | Pigeon Lake ..... | 100 | |
| | Old White Mud Fort ... | 50 | |
| | | 25,700 | acres in Saskatchewan District. |
| Cumberland ..... | Cumberland House ..... | 100 | |
| | Fort La Cocue ..... | 3,000 | |
| | Pelican Lake ..... | 50 | |
| | Moose Woods ..... | 1,000 | |
| | The Pas ..... | 25 | |
| | Moose Lake ..... | 50 | |
| | Grande Rapid Portage .. | 100 | 50 acres at each end of portage. |
| | | 4,325 | acres in Cumberland District. |

Northern Department, RUPERT'S LAND—*Concluded*

| *District* | *Post* | *Acres of Land* | |
|---|---|---|---|
| Swan River ..... | Fort Pelly..... | 3,000 | |
| | Fort Ellice..... | 3,000 | |
| | Qu'Appelle Lakes..... | 2,500 | |
| | Touchwood Hills ..... | 500 | |
| | Shoal River ..... | 50 | |
| | Manitobah ..... | 50 | |
| | Fairford ..... | 100 | |
| | | —— | 9,200 acres in Swan River District. |
| Red River ..... | Upper Fort Garry and Town of Winnipeg ... | | |
| | Lower Fort Garry (including the farm the Company now have under cultivation) ..... | ..... | Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council. |
| | White Horse Plain ... | | |
| Manitobah Lake..... | Oak Point. | 50 | |
| Portage La Prairie... | ..... | 1,000 | |
| | | —— | 1,050 |
| Lake La Pluie ..... | Fort Alexander..... | 500 | |
| | Fort Frances ..... | 500 | |
| | Eagle's Nest..... | 20 | |
| | Big Island ..... | 20 | |
| | Lac du Bonnet ..... | 20 | |
| | Rat Portage ..... | 50 | |
| | Shoal Lake ..... | 20 | |
| | Lake of the Woods ..... | 50 | |
| | Whitefish Lake ..... | 20 | |
| | English River ..... | 20 | |
| | Hungary Hall ..... | 20 | |
| | Trout Lake..... | 20 | |
| | Clear Water Lake ..... | 20 | |
| | Sandy Point..... | 20 | |
| | | —— | 1,300 acres in Lac La Pluie District. |
| York ..... | York Factory..... | 100 | |
| | Churchill..... | 10 | |
| | Severn..... | 10 | |
| | Trout Lake..... | 10 | |
| | Oxford ..... | 100 | |
| | Jackson's Bay ..... | 10 | |
| | God's Lake..... | 10 | |
| | Island Lake..... | 10 | |
| | | —— | 260 |
| Norway House ..... | Norway House..... | 100 | |
| | Berens' River..... | 25 | |
| | Grand Rapid..... | 10 | |
| | Nelson's River ..... | 10 | |
| | | —— | 145 |
| Total in Northern Department .... | | | 42,170 acres. |

Southern Department, RUPERT'S LAND

| | | | |
|---|---|---|---|
| Albany..... | Albany Factory ..... | 100 | |
| | Martin's Falls ..... | 10 | |
| | Osnaburg ..... | 25 | |
| | Lac Seul ..... | 500 | |
| | | —— | 635 |
| East Main ..... | Little Whale River .... | 50 | |
| | Great Whale River ..... | 50 | |
| | Fort George ..... | 25 | |
| | | —— | 125 |

Southern Department, RUPERT'S LAND—*Concluded*

| *District* | *Post* | *Acres of Land* | |
|---|---|---|---|
| Moose | Moose Factory | 100 | |
| | Hannah Bay | 10 | |
| | Abitibi | 10 | |
| | New Brunswick | 25 | |
| | | | 145 |
| Rupert's River | Rupert's House | 50 | |
| | Mistassing | 10 | |
| | Temiskamay | 10 | |
| | Woswonaby | 10 | |
| | Mechiskun | 10 | |
| | Pike Lake | 10 | |
| | Nitchequou | 10 | |
| | Kamapiscan | 10 | |
| | | | 120 |
| Kinogumissee | Matawagamique | 50 | |
| | Kuckatoosh | 10 | |
| | | | 60 |
| Total in Southern Department | | | 1,085 acres. |

Montreal Department, RUPERT'S LAND

| | | | |
|---|---|---|---|
| Superior | Long Lake | 10 | |
| Temiscaminque | Kakababeagino | 10 | |
| | | | 20 |
| Labrador | Fort Nascopie | 75 | |
| | Outposts, ditto | 25 | |
| | Fort Chimo (Ungava) | 100 | |
| | South River, outposts | 30 | |
| | George's River | 50 | |
| | Whale River | 50 | |
| | North's River | 25 | |
| | False River | 25 | |
| | | | 380 |
| Total in Montreal Department | | | 400 acres. |

Northern Department, NORTH WEST TERRITORY

| | | | |
|---|---|---|---|
| Athabasca | Fort Chippewyan | 10 | |
| | Fort Vermilion | 500 | |
| | Fort Dunvegan | 50 | |
| | Fort St. John's | 20 | |
| | Forks of Athabasca River | 10 | |
| | Battle River | 5 | |
| | Fond du Lac | 5 | |
| | Salt River | 5 | |
| | | | 605 acres in Athabasca District. |
| McKenzie's River | Fort Simpson | 100 | |
| | Fort Liard | 300 | |
| | Fort Nelson | 200 | |
| | The Rapids | 100 | |
| | Hay River | 20 | |
| | Fort Resolution | 20 | |
| | Fort Rae | 10 | |
| | Fond du Lac | 10 | |
| | Fort Norman | 10 | |
| | Fort Good Hope | 10 | |
| | Peel's River | 10 | |
| | Lapierre's House | 10 | |
| | Fort Halkett | 100 | |
| | | | 900 acres in McKenzie's R. District. |
| Total in North West Territory | | | 1,505 acres. |

RECAPITULATION

| | Acres |
|---|---|
| Northern Department, Rupert's Land | 42,170 |
| Southern „ „ | 1,085 |
| Montreal „ „ | 400 |
| Northern Department, Northwest Territory | 1,505 |
| | 45,160 |

## CLXXVII

## ORDER OF HER MAJESTY IN COUNCIL ADMITTING BRITISH COLUMBIA INTO THE UNION, 1871

At the Court at Windsor, the 16th day of May, 1871.

PRESENT

The QUEEN'S Most Excellent Majesty.

His Royal Highness Prince ARTHUR

| | |
|---|---|
| Lord Privy Seal. | Lord Chamberlain. |
| Earl Cowper. | Mr. Secretary Cardwell. |
| Earl of Kimberley. | Mr. Ayrton. |

Whereas by the British North America Act, 1867, provision was made for the Union of the Provinces of Canada, Nova Scotia and New Brunswick into the Dominion of Canada, and it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and of the Legislature of the Colony of British Columbia, to admit that Colony into the said Union, on such terms and conditions as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act; And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland;

And whereas by Addresses from the Houses of the Parliament of Canada, and from the Legislative Council of British Columbia respectively, of which Addresses copies are contained in the Schedule to this Order annexed, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, under the one hundred and forty-sixth section of the hereinbefore recited Act, to admit British Columbia into the Dominion of Canada, on the terms and conditions set forth in the said Addresses;

And whereas Her Majesty has thought fit to approve of the said terms and conditions, it is hereby ordered and declared by Her Majesty, by and with the advice of Her Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Act of Parliament, that from and after the twentieth day of July, one thousand eight hundred and seventy-one, the said Colony of British Columbia shall be admitted into and become part of the Dominion of Canada, upon the terms and conditions set forth in the hereinbefore recited Addresses. And, in accordance with the terms of the said Addresses relating to the Electoral Districts in British Columbia, for which the first election of members to serve in the House of Commons of the said Dominion shall take place, it is hereby further ordered and declared that such electoral districts shall be as follows:—

"New Westminster District" and the "Coast District," as defined in a public notice issued from the Lands and Works Office in the said Colony, on the 15th day of December, one thousand eight hundred and sixty-nine, by the desire of the Governor and purporting to be in accordance with the provisions of the thirty-ninth clause of the "Mineral Ordinance, 1869," shall constitute one district, to be designated "New Westminster District" and return one Member.

"Cariboo District" and "Lillooet District," as specified in the said public notice, shall constitute one district, to be designated "Cariboo District," and return one Member.

"Yale District" and "Kootenay District," as specified in the said public notice, shall constitute one District, to be designated "Yale District," and return one Member.

Those portions of Vancouver Island, known as "Victoria District," "Esquimalt District," and "Metchosin District," as defined in the official maps of those districts which are in the Land Office, Victoria, and designated respectively, "Victoria District Official Map, 1858," "Esquimalt District Official Map 1858," and "Metchosin District Official Map, A.D. 1858," shall constitute one District, to be designated "Victoria District," and return two Members.

All the remainder of Vancouver Island, and all such islands adjacent thereto as were formerly dependencies of the late Colony of Vancouver Island shall constitute one district, to be designated "Vancouver Island District," and return one Member.

And the Right Honourable Earl of Kimberley, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions therein accordingly.

ARTHUR HELPS.

SCHEDULE.

*Address of the Senate of Canada.*

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, your Majesty's most dutiful and loyal subjects, the Senate of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

That by a despatch from the Governor of British Columbia, dated 23rd January, 1871, with other papers laid before this House, by message from His Excellency the Governor-General, of the 27th February last, this House learns that the Legislative Council of that colony, in council assembled, adopted, in January last, an Address representing to Your Majesty that British Columbia was prepared to enter into Union with the Dominion of Canada, upon the terms and conditions mentioned in the said Address, which is as follows:

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

WE, Your Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of British Columbia, in council assembled, humbly approach Your Majesty for the purpose of representing:—

That, during the last session of the late Legislative Council, the subject of the admission of the Colony of British Columbia into the Union or Dominion of Canada was taken into consideration, and a resolution on the subject was agreed to, embodying the terms upon which it was proposed that this colony should enter the Union;

That after the close of the session, Delegates were sent by the Government of this Colony to Canada to confer with the Government of the Dominion with respect to the admission of British Columbia into the Union upon the terms proposed;

That after considerable discussion by the Delegates with the Members of the Government of the Dominion of Canada, the terms and conditions hereinafter specified were adopted by a Committee of the Privy Council of Canada, and were by them reported to the Governor General for his approval;

That such terms were communicated to the Government of this Colony by the Governor General of Canada, in a despatch dated July 7th, 1870, and are as follows:—

1. Canada shall be liable for the debts and liabilities of British Columbia existing at the time of the Union.

2. British Columbia not having incurred debts equal to those of the other provinces now constituting the Dominion, shall be entitled to receive, by half-yearly payments, in advance from the General Government, interest at the rate of five per cent per annum on the difference between the actual amount of its indebtedness at the date of the Union, and the indebtedness per head of the population of Nova Scotia and New Brunswick (27.77 dollars), the population of British Columbia being taken at 60,000.

3. The following sums shall be paid by Canada to British Columbia for the support of its Government and Legislature, to wit, an annual subsidy of 35,000 dollars, and an annual grant equal to 80 cents per head of the said population of 60,000, both half-yearly in advance, such grant of 80 cents per head to be augmented in proportion to the increase of population, as may be shown by each subsequent decennial census, until the population amounts to 400,000, at which rate such grant shall thereafter remain, it being understood that the first census be taken in the year 1881.

4. The Dominion will provide an efficient mail service, fortnightly, by steam communication between Victoria and San Francisco, and twice a week between Victoria and Olympia; the vessels to be adapted for the conveyance of freight and passengers.

5. Canada will assume and defray the charges for the following services:

A. Salary of the Lieutenant-Governor;
B. Salaries and allowances of the Judges of the Superior Courts and the County or District Courts;
C. The charges in respect to the Department of Customs;
D. The Postal and Telegraphic Services;
E. Protection and encouragement of Fisheries;
F. Provision for the Militia;
G. Lighthouses, Buoys and Beacons, Shipwrecked Crews, Quarantine and Marine Hospitals, including a Marine Hospital at Victoria;
H. The Geological Survey;
I. The Penitentiary;

And such further charges as may be incident to and connected with the services which by the British North America Act, 1867, appertain to the General Government, and as are or may be allowed to the other Provinces.

6. Suitable pensions, such as shall be approved of by Her Majesty's Government shall be provided by the Government of the Dominion for those of Her Majesty's servants in the Colony whose position and emoluments derived therefrom would be affected by political changes on the admission of British Columbia into the Dominion of Canada.

7. It is agreed that the existing Customs tariff and Excise duties shall continue in force in British Columbia until the railway from the Pacific Coast and the system of railways in Canada are connected, unless the Legislature of British Columbia should sooner decide to accept the Tariff and Excise Laws of Canada. When Customs and Excise duties are, at the time of the union of British Columbia with Canada, leviable on any goods, wares or merchandises in British Columbia, or in the other Provinces of the Dominion, those goods, wares and merchandises may, from and after the Union, be imported into British Columbia from the Provinces now composing the Dominion, or into either of those Provinces from British Columbia, on proof of payment of the Customs or Excise duties leviable thereon in the Province of exportation, and on payment of such further amount (if any) of Customs or Excise duties as are leviable thereon in the Province of importation. This arrangement to have no force or effect after the assimilation of the Tariff and Excise duties of British Columbia with those of the Dominion.

8. British Columbia shall be entitled to be represented in the Senate by three members, and by six members in the House of Commons. The representation to be increased under the provisions of The British North America Act, 1867.

9. The influence of the Dominion Government will be used to secure the continued maintenance of the naval station at Esquimalt.

10. The provisions of the British North America Act, 1867, shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this Minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act.

11. The Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the Rocky Mountains, towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further,

to secure the completion of such railway within ten years from the date of the Union.

And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in furtherance of the construction of the said railway, a similar extent of public lands along the line of railway throughout its entire length in British Columbia (not to exceed, however, twenty (20) miles on each side of said line,) as may be appropriated for the same purpose by the Dominion Government from the public lands of the North-West territories and the Province of Manitoba: Provided that the quantity of land which may be held under pre-emption right or by Crown grant within the limits of the tract of land in British Columbia to be so conveyed to the Dominion Government shall be made good to the Dominion from contiguous public lands; and provided further, that until the commencement, within two years, as aforesaid, from the date of the Union, of the construction of the said railway, the Government of British Columbia shall not sell or alienate any further portions of the public lands of British Columbia in any other way than under right of pre-emption requiring actual residence of the pre-emptor on the land claimed by him. In consideration of the land to be so conveyed in aid of the construction of the said railway, the Dominion Government agree to pay to British Columbia from the date of the Union, the sum of 100,000 dollars per annum, in half-yearly payments in advance.

12. The Dominion Government shall guarantee the interest for ten years from the date of the completion of the works, at the rate of five per centum per annum, on such sum, not exceeding £100,000 sterling, as may be required for the construction of a first class graving dock at Esquimalt.

13. The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.

To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time to conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

14. The Constitution of the Executive Authority and of the Legislature of British Columbia shall, subject to the provisions of the British North America Act, 1867, continue as existing at the time of the Union until altered under the authority of the said Act, it being at the same time understood that the Government of the Dominion will readily consent to the introduction of responsible government when desired by the inhabitants of British Columbia, and it being likewise understood that it is the intention of the Governor of British Columbia, under the authority of the Secretary of State for the Colonies, to amend the existing Constitution of the Legislature by providing that a majority of its Members shall be elective.

The Union shall take effect according to the foregoing terms and conditions on such day as Her Majesty by and with the advice of Her Most Honourable Privy Council may appoint (on addresses from the Legislature of the Colony of British Columbia and of the Houses of Parliament of Canada in the terms of the 146th section of the British North America Act, 1867,) and British Columbia may in its address specify the electoral districts for which the first election of Members to serve in the House of Commons shall take place.

That such terms have proved generally acceptable to the people of this Colony.

That this Council is, therefore, willing to enter into Union with the Dominion of Canada upon such terms, and humbly submit that, under the circumstances, it is expedient that the admission of this Colony into such Union, as aforesaid, should be effected at as early a date as may be found practicable under the provisions of the 146th section of the British North America Act, 1867.

We, therefore, humbly pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the 146th section of the British North America Act, 1867, to admit British Columbia into the Union or Dominion of Canada, on the basis of the terms

and conditions offered to this Colony by the Government of the Dominion of Canada, hereinbefore set forth; and inasmuch as by the said terms British Columbia is empowered in its address to specify the electoral districts for which the first election of members to serve in the House of Commons shall take place, we humbly pray that such electoral districts may be declared, under the Order in Council, to be as follows:

That "New Westminster District," and the "Coast District," as defined in a public notice issued from the Lands and Works Office on the 15th day of December, 1869, by the desire of the Governor, and purporting to be in accordance with the provisions of the 39th clause of the "Mineral Ordinance, 1869," shall constitute one district, to be designated "New Westminster District," and return one Member.

That "Cariboo District," and "Lillooet District," as specified in the said public notice, shall constitute one district, to be designated "Cariboo District," and return one Member.

That "Yale District," and "Kootenay District," as specified in the said public notice, shall constitute one district, to be designated "Yale District," and return one Member.

That those portions of Vancouver Island known as "Victoria District," "Esquimalt District," and "Metchosin District," as defined in the official maps of those districts in the Land Office, Victoria, and which maps are designated respectively, "Victoria District Official Map, 1858," "Esquimalt District Official Map, 1858," and "Metchosin District Official Map, 1858," shall constitute one district, to be designated "Victoria District," and return two Members.

And that all the remainder of Vancouver Island, and all such islands adjacent thereto as were formerly dependencies of the late colony of Vancouver Island shall constitute one district, to be designated "Vancouver Island District," and return one Member.

We further humbly represent, that the proposed terms and conditions of Union of British Columbia with Canada, as stated in the said Address, are in conformity with those preliminarily agreed upon between delegates from British Columbia and the Members of the Government of the Dominion of Canada, and embodied in a Report of a Committee of the Privy Council, approved by His Excellency the Governor General in Council, on the 1st July, 1870, which approved Report is as follows:

*Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 1st of July, 1870.*

The Committee of the Privy Council have had under consideration a Despatch, dated the 7th May, 1870, from the Governor of British Columbia, together with certain Resolutions submitted by the Government of that colony to the Legislative Council thereof—both hereunto annexed—on the subject of the proposed Union of British Columbia with the Dominion of Canada; and after several interviews between them and the Honourable Messrs. Trutch, Helmcken and Carrall, the Delegates from British Columbia, and full discussion with them of the various questions connected with that important subject, the Committee now respectfully submit for Your Excellency's approval, the following terms and conditions to form the basis of a political union between British Columbia and the Dominion of Canada.

[*Here are set forth at length the terms of Union as stated on pages 659-661 in the Address of the Legislative Council of British Columbia.*]

(Certified.) Wm. H. Lee,
*Clerk, Privy Council.*

We further humbly represent that we concur in the terms and conditions of Union set forth in the said Address, and approved Report of the Committee of the Privy Council above mentioned; and most respectfully pray that your Majesty will be graciously pleased, by and with the advice of your Majesty's most Honourable Privy Council, under the 146th clause of The British North America Act, 1867, to unite British Columbia with the Dominion of Canada, on the terms and conditions above set forth.

The Senate, Wednesday, April 5th, 1871.

(Signed) Joseph Cauchon, *Speaker.*

*Address of the Commons of Canada.*

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the Commons of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

[*The balance of the Address is identical in form with the Address of the Senate and is omitted for that reason.*]

JAMES COCKBURN, *Speaker.*

House of Commons,
Saturday, 1st April, 1871.

*Address of the Legislative Council of British Columbia.*

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of British Columbia in Council assembled, humbly approach your Majesty for the purpose of representing:—

[*Etc., etc., etc. The Address is set forth at length in the Address of the Senate.*]

(Signed) PHILIP J. HANKIN,
*Speaker.*

## CLXXVIII

## THE BRITISH NORTH AMERICA ACT, 1871

(34 & 35 Victoria, c. 28.)

*An Act respecting the Establishment of Provinces in the Dominion of Canada.*

29th June, 1871.

Whereas doubts [1] have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited for all purposes as *The British North America Act*, 1871.

Parliament of Canada may establish new Provinces and provide for the constitution etc., thereof.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order and good government of such Province, and for its representation in the said Parliament.

Alteration of limits of Provinces.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

Parliament of Canada may legislate for any territory not included in a Province.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively:

Confirmation of Acts of Parliament of Canada.

"An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada"; and

[1] See lord Kimberley's speech in Hansard, vol. ccvi, 3rd ser., p. 1171, for the reasons which led to the introduction of this bill.

"An Act [1] to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba."

32-33 V., c. 3.

33 V., c. 3. shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament in so far as it relatesto the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

## CLXXIX

## ORDER OF HER MAJESTY IN COUNCIL ADMITTING PRINCE EDWARD ISLAND INTO THE UNION, 1873

At the Court at Windsor, the 26th day of June, 1873.

PRESENT:

The QUEEN'S Most Excellent Majesty.

Lord President. Earl of Kimberley.
Earl Granville. Lord Chamberlain.
Mr. Gladstone.

Whereas by the British North America Act, 1867, provision was made for the Union of the Provinces of Canada, Nova Scotia and New Brunswick into the Dominion of Canada, and it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and of the Legislature of the Colony of Prince Edward Island, to admit that Colony into the said Union on such terms and conditions as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act; and it was further enacted that the provisions of any Order in Council in that behalf, should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

And whereas by Addresses from the Houses of the Parliament of Canada, and from the Legislative Council and House of Assembly of Prince Edward Island respectively, of which Addresses, copies are contained in the Schedule to this Order annexed, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, under the one hundred and forty-sixth section of the hereinbefore recited Act, to admit Prince Edward Island into the Dominion of Canada, on the terms and conditions set forth in the said Addresses.

And whereas Her Majesty has thought fit to approve of the said terms and conditions, it is hereby ordered and declared by Her Majesty, by and with the advice of Her Privy Council, in pursuance and exercise of the powers vested in Her Majesty, by the said Act of Parliament, that from and after the first day of July, one thousand eight hundred and seventy-three, the said Colony of Prince Edward Island shall be admitted into and become part of the Dominion of Canada, upon the terms and conditions set forth in the hereinbefore recited Addresses.

And in accordance with the terms of the said Addresses relating to the Electoral Districts for which, the time within which, and the laws and provisions under which the first election of members to serve in the House of Commons of Canada, for such Electoral Districts shall be held, it is hereby further ordered and declared that "Prince County" shall constitute one district, to be designated 'Prince County District," and return two members; that "Queen's County" shall constitute one district, to be designated "Queen's County District," and return two members; that "King's County" shall constitute one district, to be designated "King's County District," and return two members; that the election

[1] No. CLXXV

of members to serve in the House of Commons of Canada, for such Electoral Districts shall be held within three calendar months from the day of the admission of the said Island into the Union or Dominion of Canada; that all laws which at the date of this Order in Council relating to the qualification of any person to be elected or sit or vote as a member of the House of Assembly of the said Island, and relating to the qualifications or disqualifications of voters, and to the oaths to be taken by voters, and to Returning Officers and Poll Clerks, and their powers and duties, and relating to Polling Divisions within the said Island, and relating to the proceedings at elections, and to the period during which such elections may be continued, and relating to the trial of controverted elections, and the proceedings incidental thereto, and relating to the vacating of seats of the members, and to the executions of new writs, in case of any seat being vacated otherwise than by a dissolution, and to all other matters connected with or incidental to elections of members to serve in the House of Assembly of the said Island, shall apply to elections of members to serve in the House of Commons for the Electoral Districts situate in the said Island of Prince Edward.

And the Right Honourable Earl of Kimberley, one of Her Majesty's Principal Secretaries of State is to give the necessary directions herein, accordingly.

ARTHUR HELPS.

SCHEDULE.

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the Commons of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

That during the present Session of Parliament we have taken into consideration the subject of the admission of the Colony of Prince Edward Island into the Union or Dominion of Canada, and have resolved that it is expedient that such admission should be effected at as early a date as may be found practicable under the one hundred and forty-sixth section of the British North America Act, 1867, on the conditions hereinafter set forth, which have been agreed upon with the Delegates from the said Colony that is to say:—

That Canada shall be liable for the debts and liabilities of Prince Edward Island at the time of the Union;

That in consideration of the large expenditure authorized by the Parliament of Canada for the construction of railways and canals, and in view of the possibility of a readjustment of the financial arrangements between Canada and the several Provinces now embraced in the Dominion, as well as the isolated and exceptional condition of Prince Edward Island, that Colony shall, on entering the Union, be entitled to incur a debt equal to fifty dollars per head of its population, as shewn by the Census Returns of 1871, that is to say: four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island not having incurred debts equal to the sum mentioned in the next preceding Resolution, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per centum per annum on the difference, from time to time, between the actual amount of its indebtedness and the amount of indebtedness authorized as aforesaid, viz., four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island shall be liable to Canada for the amount (if any) by which its public debt and liabilities at the date of the Union, may exceed four millions seven hundred and one thousand and fifty dollars and shall be chargeable with interest at the rate of five per centum per annum on such excess;

That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per centum per annum, upon any sum not exceeding eight hundred thousand dollars which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors;

That in consideration of the transfer to the Parliament of Canada of the powers

of taxation, the following sums shall be paid yearly by Canada to Prince Edward Island, for the support of its Government and Legislature, that is to say, thirty thousand dollars, and an annual grant equal to eighty cents per head of its population, as shown by the Census returns of 1871, viz., 94,021, both by half-yearly payments in advance—such grant of eighty cents per head to be augmented in proportion to the increase of population of the Island as may be shown by each subsequent decennial Census, until the population amounts to four hundred thousand, at which rate such grant shall thereafter remain, it being understood that the next Census shall be taken in the year 1881;

That the Dominion Government shall assume and defray all the charges for the following services, viz.:—

The salary of the Lieutenant-Governor;

The salaries of the Judges of the Superior Court and of the District or County Courts when established;

The charges in respect of the Department of Customs;

The Postal Department;

The protection of the Fisheries;

The provision for the Militia;

The Lighthouses, Shipwrecked Crews, Quarantine and Marine Hospitals;

The Geological Survey;

The Penitentiary;

Efficient Steam Service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion;

The maintenance of telegraphic communication between the Island and the mainland of the Dominion;

And such other charges as may be incident to, and connected with, the services which by the British North America Act, 1867, appertain to the General Government, and as are or may be allowed to the other Provinces;

That the railways under contract and in course of construction for the Government of the Island, shall be the property of Canada;

That the new building in which are held the Law Courts, Registry Office, etc., shall be transferred to Canada, on the payment of sixty-nine thousand dollars. The purchase to include the land on which the building stands, and a suitable space of ground in addition, for yard room, etc.;

That the Steam Dredge Boat in course of construction, shall be taken by the Dominion, at a cost not exceeding twenty-two thousand dollars;

That the Steam Ferry Boat owned by the Government of the Island, and used as such, shall remain the property of the Island;

That the population of Prince Edward Island having been increased by fifteen thousand or upwards since the year 1861, the Island shall be represented in the House of Commons of Canada by six Members; the representation to be readjusted, from time to time, under the provisions of the British North America Act, 1867;

That the constitution of the Executive Authority and of the Legislature of Prince Edward Island, shall, subject to the provisions of the British North America Act, 1867, continue, as at the time of the Union, until altered under the authority of the said Act, and the House of Assembly of Prince Edward Island existing at the date of the Union shall, unless sooner dissolved, continue for the period for which it was elected;

That the provisions in the British North America Act, 1867, shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be especially applicable to, and only to affect one and not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by these resolutions, be applicable to Prince Edward Island, in the same way and to the same extent as they apply to the other Provinces of the Dominion, and as if the Colony of Prince Edward Island had been one of the Provinces originally united by the said Act.

That the Union shall take place on such day as Her Majesty may direct by Order in Council, on Addresses to that effect from the House of Parliament of Canada and of the Legislature of the Colony of Prince Edward Island, under the one hundred and forty-sixth section of the British North America Act, 1867, and that the Electoral Districts for which, the time within which, and the laws

and provisions under which, the first Election of Members to serve in the House of Commons of Canada for such Electoral Districts shall be held, shall be such as the said Houses of the Legislature of the said Colony of Prince Edward Island may specify in their said Addresses.

We, therefore, humbly pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the one hundred and forty-sixth section of the British North America Act, 1867, to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions hereinbefore set forth.

(Signed) JAMES COCKBURN,
*Speaker.*

House of Commons,
20th May, 1873.

The Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the Senate of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

That on the sixteenth day of May, instant, His Excellency the Governor General transmitted for our information a copy of the minutes of a Conference between a Committee of the Privy Council of Canada and certain Delegates from the Colony of Prince Edward Island, on the subject of the Union of the said Colony with the Dominion of Canada, and of the Resolutions adopted by them, as the basis of such Union, which are in the following words, that is to say:—

[*Here follows a statement of the conditions of Union as set forth in the Address of the House of Commons,* supra, *pages 665-667.*]

The House of Commons having in the present Session of the Parliament of the Dominion passed an Address to Your Majesty, praying that Your Majesty would be graciously pleased, by and with the advice of Your Most Honourable Privy Council, under the provisions of the one hundred and forty-sixth section of the British North America Act, 1867, to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions set forth in the above-mentioned Resolutions.

Wherefore, we, the Senate of Canada, fully concurring in the terms and conditions expressed in the Address of the House of Commons, humbly pray that Your Majesty will be pleased, by and with the advice of Your Most Honourable Privy Council, under the provisions of the one hundred and forty-sixth section of the British North America Act, 1867, to admit Prince Edward Island into the Dominion of Canada.

(Signed) P. J. O. CHAUVEAU,
*Speaker of the Senate.*

The Senate, May 21, 1873.

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council of Prince Edward Island, in Parliament assembled, humbly approach Your Majesty, and pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the one hundred and forty-sixth section of the British North America Act, 1867, to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions expressed in certain Resolutions recently passed by the Houses of the Parliament of Canada, and also by the Houses of the Legislature of Prince Edward Island, which said Resolutions are as follows:—

[*Here follows a statement of the conditions of Union as set forth in the Address of the House of Commons,* supra.]

That for the first election of members to be returned by this Island for the House of Commons of the Dominion of Canada, this Island shall be divided into Electoral Districts as follows:—That "Prince County" shall constitute one district and return two members; that "Queen's County" shall constitute one district, and return two members; that "King's County" shall constitute one

district, and return two members; that the first election for members to serve in the House of Commons of Canada, shall take place within three calendar months after this Island shall be admitted, and become part of the Dominion of Canada; and we further humbly pray, that all laws which at the date of the Order in Council, by which the said Island of Prince Edward shall be admitted into the Dominion of Canada, relating to the qualification of any person to be elected to sit or vote as a member of the House of Assembly of the said Island, and relating to the qualifications or disqualifications of voters, and to the oaths to be taken by voters, and to returning officers and poll clerks, and their powers and duties, and relating to polling divisions within the said Island, and relating to the proceedings at elections, and to the period during which such election may be continued, and relating to the trial of controverted elections and the proceedings incident thereto, and relating to the vacating of seats of members, and to the execution of new writs, in case of any seat being vacated otherwise than by a dissolution, and all other matters connected with or incidental to elections of members to serve in the House of Assembly of the said Island, shall apply to elections of members to serve in the House of Commons for the Electoral Districts, situate in the said Island of Prince Edward.

(Signed) DONALD MONTGOMERY,
*President.*

Committee Room, Legislative Council,
May 28, 1873.

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, Your Majesty's most dutiful and loyal subjects, the House of Assembly of Prince Edward Island in Parliament assembled, humbly approach Your Majesty, and pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the one hundred and forty-sixth section of the British North America Act, 1867, to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions expressed in certain Resolutions recently passed by the Houses of the Parliament of Canada, and also by the Houses of the Legislature of Prince Edward Island, which said Resolutions are as follows:—

[*Here follows a statement of the conditions of Union as set forth in the Address of the House of Commons,* supra, *and the Address concludes with a paragraph identical with the last paragraph of the Address of the Legislative Council of Prince Edward Island,* supra.]

(Signed) STANISLAUS F. PERRY,
*Speaker.*

House of Assembly, May 28, 1873.

## CLXXX

## PARLIAMENT OF CANADA ACT, 1875 [1]

(38 & 39 Victoria, c. 38.)

*An Act to remove certain doubts with respect to the powers of the Parliament of Canada, under Section* 18 *of the British North America Act,* 1867.

19th July, 1875.

Whereas by section 18 of *The British North America Act*, 1867, it is provided as follows:—"The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

And whereas doubts have arisen with regard to the power of defining by an

[1] During the Pacific railway scandal, the Canadian parliamentary committee could not take evidence on oath, as this right did not belong to the British house of commons, except in connexion with private bills, until 1871. This act gives the Dominion parliament power to bring its practice into line with the contemporary practice in the British parliament.

Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers or immunities; and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Substitution of new section for section 18 of 30 and 31 V., c. 3.

1. Section 18 of *The British North America Act*, 1867, is hereby repealed, without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed:—

The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

Confirmation of Act of Parliament of Canada, 31 and 32 Vict., c. 24.

2. The Act of the Parliament of Canada passed in the thirty-first year of the reign of her present Majesty, chapter twenty-four, intituled *An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament*, shall be deemed to be valid, and to have been valid as from the date at which the royal assent was given thereto by the Governor General of the Dominion of Canada.

Short title.

3. This Act may be cited as *The Parliament of Canada Act*, 1875.

## CLXXXI

## EDWARD BLAKE ON THE OFFICE OF GOVERNOR GENERAL, 1876

[Trans.: *Canada Sessional Papers*, 1877.]

The existing forms in the case of Canada have been felt for some time to be capable of amendment, for reasons which require that special consideration should be given to her position, and which render unsuitable for her the forms which may be eminently suited to some of the colonies.

Canada is not merely a colony or a province: she is a Dominion composed of an aggregate of seven large provinces federally united under an imperial charter, which expressly recites that her constitution is to be similar in principle to that of the United Kingdom. Nay, more, besides the powers with which she is invested over a large part of the affairs of the inhabitants of the several provinces, she enjoys absolute powers of legislation and administration over the people and territories of the north-west, out of which she has already created one province, and is empowered to create others, with representative institutions.

These circumstances, together with the vastness of her area, the numbers of her free population, the character of the representative institutions and of the responsible government which as citizens of the various provinces and of Canada her people have so long enjoyed, all point to the propriety of dealing with the question in hand in a manner very different from that which might be fitly adopted with reference to a single and comparatively small and young colony.

Besides the general spread of the principles of constitutional freedom there has been, in reference to the colonies, a recognized difference between their circumstances resulting in the application to those in a less advanced condition of a lesser measure of self-government, while others are said to be invested with 'the fullest freedom of political government'; and it may be fairly stated that there is no dependency of the British Crown which is entitled to so full an application of the principles of constitutional freedom as the Dominion of Canada.

. . . . . .

As a rule the Governor does and must act through the agency of Ministers, and Ministers must be responsible for such action. . . . Upon the argument that there are certain conceivable instances in which, owing to the existence of substantial Imperial as distinguished from Canadian interests, it may be considered that full freedom of action is not vested in the Canadian people, it appears to me that any such cases must, pending a solution of the great problem of Imperial Government, be dealt with as they arise. . . . The effort to reconcile by any form of words, the responsibility of Ministers under the Canadian Constitution with

a power to the Governor to take even a negative line independently of advice, cannot, I think, succeed. The truth is, that Imperial interests are, under our present system of Government to be secured in matters of Canadian executive policy, not by any such clause in the Governor's instructions (which would be practically inoperative, and if it can be supposed to be operative would be mischievous); but by mutual good feeling, and by proper consideration of Imperial interests on the part of His Majesty's Canadian advisers; the Crown necessarily retaining all its constitutional rights and powers, which would be exercisable in any emergency in which the indicated securities might be found to fail.

## CLXXXII

## EDWARD BLAKE ON THE PREROGATIVE OF MERCY, 1876

[Trans.: *Canada Sessional Papers.*]

The main question is upon the instruction given to the Governor that he is in capital cases either to extend or to withhold a pardon or a reprieve according to his own deliberate judgement whether the members of the Council concur therein or otherwise. Having regard to the form of the commission and of this instruction the proper inference is that in all cases not capital the action of the Governor by the way of pardon or commutation is to be, as is his action in other matters, under advice, and that it is only in the capital cases which are specially dealt with by the instruction that he is to act upon his own judgement even against advice. The distinction thus created does not appear well founded. It provides a different rule of action based simply on the gravity of the sentence, whereas the only tenable distinction that occurs to the sub-committee is between the cases (whether capital or not) which may involve Imperial interests and those which, not involving such interests, concern solely the internal administration of the affairs of the Dominion.

The sub-committee would suggest that any instruction as to independent action should be limited to such cases which are referred to in fuller language by Lord Carnarvon in his dispatch on this subject to Governor Robinson[1] of May 4, 1875, as cases where 'matters of Imperial interest or policy, or the interests of other countries or Colonies are involved'. Lord Carnarvon instances the case of a kidnapper tried and sentenced under an Imperial Act by a Colonial Court, and that of a convict whose sentence was commuted on condition of exile from the Colony. The latter class is disposed of by the sixth clause of the proposed commission. With the former class may be ranged those of offenders who are subjects of other countries, and of political offenders. It is probable that even in the exceptional cases suggested (which of course involve as well internal as external interests) the action of the Governor would generally be in accordance with advice; and no doubt to act against advice would be to incur a very grave responsibility, though not to the Canadian people. It would also seem that in the vast majority of exceptional cases the exception would be found to be technical not real, the substantial interests involved being solely Canadian, in which event the Governor would presumably act under advice. But the sub-committee have freely recognized the possible existence in the excepted classes of Imperial interests, and this possibility furnishes, in their view, the only ground for the application to these classes of a special rule. It appears to them, however, that this special rule may be applied under the general language contained in the 8th clause of the instructions, on which they have already commented, and which if interpreted or limited in the mode they suggest would seem to them to meet every exigency.

It now becomes the duty of the sub-committee to refer briefly to the arguments upon which in the case of the Australian colonies it has been affirmed that the independent action of the Governor-General in the exercise of this power should be of a wider range than that which they suggest as proper in the case of Canada.

To the substantial argument for independent action in certain exceptional cases, the sub-committee have already alluded, and they refer to it now only in

[1] Sir H. G. R. Robinson (afterwards lord Rosmead), governor of New South Wales 1872–9. For the dispatch referred to by Blake, see *Parl. Pap.*, C. 1248. For the history, see Keith, *Responsible Government*, vol. iii, pp. 1386 ff. (Oxford, 1912), vol. ii, pp. 1110 ff. (new ed., Oxford, 1928).

order to point out that the existence of this exception is not a reason for giving in all cases independent power, but rather the reverse.

It is the exception which proves the rule; any arguments based upon its existence are arguments for exceptional treatment, but they are not reasons for making that treatment general, and they leave applicable to the bulk of the cases the rule which but for the exception would be of universal application. The other reasons referred to appear to be—

(I) That the high prerogative in question being personally delegated to the Governor, he cannot be in any way relieved from the duty of judging for himself in every case in which that prerogative is to be exercised, as the responsible minister of the Crown in a Colony cannot be looked upon as occupying the same position in regard to the Queen's prerogative of pardon as the Home Secretary. The sub-committee would in this connexion refer to the views of Council on the general question of ministerial powers and responsibilities as expressed in the Minute of Council and the report annexed thereto, thinking it needless to restate in detail the position taken on the general subject and the argument advanced against the proposed division of powers and responsibilities.

The prerogative of pardon has been rightly vested by statute in the Sovereign, since all criminal offences are against 'her peace' or 'her Crown and dignity', and it is reasonable that the person injured should have the power to forgive; but neither the punishment of these injuries nor their forgiveness (both being matters which affect the people) is arbitrary; the one can be, and accordingly is, regulated by law; the other, being mainly beyond the province of law, is yet, like the remaining prerogatives of the British Sovereign, held in trust for the welfare of the people, and so far as it is beyond the province of law is regulated by the general principle of the Constitution.

There may in this, as in other instances, be some difficulty in running out an exact analogy between the position in Canada and in England, but to the sub-committee it appears that the application to this subject of the fundamental rule of the Constitution, as expounded in the report referred to, affords the true solution of the question, and would furnish the nearest possible analogy between the practice proper to be pursued in each country.

In the United Kingdom, while the British Parliament makes laws for the punishment of crimes committed by their inhabitants, the Sovereign exercises her prerogative of mercy towards such criminals under the advice of her minister there, who is chosen as other British ministers are chosen, and is responsible as other British ministers are responsible to the British Parliament for his advice. Therefore in the United Kingdom this power is exercised under the same restraints and with the same securities to the people concerned as the other powers of government.

This it seems to the sub-committee is the practical result which should be obtained in the Dominion.

Here while the Canadian Parliament makes laws for the punishment of crimes committed by the inhabitants of Canada, the Sovereign should exercise the prerogative of mercy towards such criminals under the advice of her Privy Council for Canada, or of her minister there, chosen as her other Canadian ministers are chosen, and responsible to the Canadian Parliament for his advice; nor, having regard to the reasons given in the report already referred to, can the suggested responsibility of the Governor to the Colonial Office for the exercise of this power independent of, though after advice, be deemed a satisfactory substitute for the responsibility to the Canadian people of a minister charged with the usual powers and duties in this respect.

(II) The second argument is that expediency requires that this prerogative should be independently exercised by the Governor, and it is suggested that 'the pressure political as well as social which would be brought to bear upon the ministers if the decision of such questions rested practically with them would be most embarrassing to them, while the ultimate consequences might be a serious interference with the sentences of the courts.'

This suggestion, which is supported, in the case of one of the Australian Colonies, by the views of local authorities, is not applicable in a general sense to Canada, where it has been commonly supposed that the decision of this as of other questions rests (at any rate in the cases not covered by the special instruction) practically with the ministers; where it is believed that unless in the exceptional cases pointed out by the sub-committee the embarrassments suggested

would but rarely occur, and that at any rate ministers would not be relieved of any such embarrassments by the proposed course; and where it is confidently maintained that no improper interference with the sentences of the courts would result.

No doubt in the exercise of this as of many other powers of Government embarrassments and difficulties may from time to time arise; but it is believed that their true solution will depend upon the unflinching application to every question of the constitutional principle, and that greater difficulties and troubles will arise from the avoidance than from the assumption of the full responsibility which the sub-committee suggest should, by the alteration of the existing instruction, be imposed on ministers even in capital cases.

## CLXXXIII

## LETTERS-PATENT CONSTITUTING THE OFFICE OF GOVERNOR-GENERAL OF THE DOMINION OF CANADA, 1878 [1]

[Trans.: *Canadian Sessional Papers*, 1879, No. XIV.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India; To all to whom these Presents shall come, Greeting:

Whereas We did, by certain Letters-Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-second day of May, 1872, in the Thirty-fifth Year of Our Reign, constitute and appoint Our Right Trusty and Right Well-beloved Cousin and Councillor, Frederick Temple, Earl of Dufferin, Knight of Our Most Illustrious Order of Saint Patrick, Knight Commander of Our Most Honorable Order of the Bath (now Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George), to be Our Governor-General in and over Our Dominion of Canada for and during Our will and pleasure.

And whereas by the 12th Section of "The British North America Act, 1867," certain powers, authorities, and functions were declared to be vested in the Governor-General, and whereas We are desirous of making effectual and permanent provision for the office of Governor-General in and over Our said Dominion of Canada, without making new Letters-Patent on each demise of the said Office.

Now know ye that We have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent of the Twenty-second day of May, 1872, and every clause, article and thing therein contained:

And further know ye that We, of our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), and that the person who shall fill the said Office of the Governor-General shall be from time to time appointed by Commission under our Sign-Manual and Signet. And we do hereby authorize and command Our said Governor-General to do and execute, in due manner, all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or

[1] Various changes have taken place in the position of the governor-general. From the year 1867 to 1878, his instructions forbade him to give his assent to any bill (*a*) for divorce, (*b*) for granting land or money or gratuity to himself, (*c*) for making paper or any other currency legal tender, (*d*) for imposing differential duties, (*e*) contrary to treaty obligations, (*f*) interfering with the discipline or control of the naval or military forces of the crown in Canada, (*g*) interfering with the royal prerogative, or the rights and property of British subjects outside of Canada, or with the trade and shipping of the United Kingdom and its dependencies, (*h*) containing provisions to which the royal assent has already been refused or which have been disallowed. Acting on these instructions, twenty-one Bills were reserved. In 1877, after Edward Blake, minister of justice, had visited England, the practice of enumerating the titles to be reserved was discontinued, a suspending clause being inserted in acts which would otherwise require the governor-general's reservation. (*Canadian Sessional Papers*, 1877, No XIII.) In addition, during lord Dufferin's tenure of office difficulties arose over the prerogative of pardon, and lord Dufferin exercised it without the advice of his ministers. During his visit to England, Blake arranged for a change, which is embodied in the Instructions printed below. In 1878 the office of governor-general of the Dominion of Canada was instituted on a permanent basis by Letters patent. For Blake's opinions, see Nos. CLXXXI, CLXXXII. These instruments are printed here from the permanent prerogative instruments of 1878. They were somewhat revised in 1905, and in that form are in Keith, *Responsible Government*, vol. iii, pp. 1561 ff. (Oxford, 1912).

appointed him by virtue of "The British North America Act, 1867," and of these present Letters-Patent, and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by our Order in Our Privy Council, or by us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And We do further authorize and empower Our said Governor-General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our Said Dominion, as may be lawfully constituted or appointed by Us.

IV. And We do further authorize and empower Our said Governor-General, so far as we lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

V. And We do further authorize and empower Our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.

VI. And whereas by "The British North America Act, 1867," it is amongst other things enacted, that it shall be lawful for Us, if We think fit, to authorize the Governor-General of Our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise, during the pleasure of Our Said Governor-General, such of the powers, authorities, and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now We do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our said Governor-General in person.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant-Governor of Our said Dominion; or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in the Senior Officer for the time being in command of Our regular troops in Our said Dominion: Provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters-Patent.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding and assisting unto Our said Governor-General, or, in the event of his death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of these Our Letters-Patent, administer the Government of Our said Dominion.

IX. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter or amend these Our Letters-Patent, as to Us or them shall seem meet.

X X

X. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of Canada.

In Witness whereof We have caused these Our Letters to be made Patent, Witness Ourself at Westminster, the Fifth day of October, in the Forty-second Year of Our Reign.

By Warrant under the Queen's Sign-Manual:

C. Romilly.

## CLXXXIV

## INSTRUCTIONS TO THE GOVERNOR-GENERAL OF THE DOMINION OF CANADA, 1878

[Trans.: *Canadian Sessional Papers*, 1879, No. XIV.]

*Dated 5th October*, 1878.

Victoria R.

Instructions to Our Governor-General in and over Our Dominion of Canada, or, in his absence, to Our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Dominion. Given at Our Court at Balmoral, this Fifth day of October, 1878, in the Forty-second year of Our Reign.

Whereas by certain Letters-Patent bearing even date herewith, We have constituted, ordered, and declared that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), and We have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion:

Now, therefore, We do, by these, Our Instructions under Our Sign-Manual and Signet, declare Our pleasure to be that Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission, under Our Sign-Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion:

And We do further declare Our pleasure to be that Our said Governor-General, and every other officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled: "An Act to Amend the Law relating to Promissory Oaths;" and likewise that he or they shall take the usual Oath for the due execution of the Office of Our Governor-General in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being, of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every persons or person as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise

all such others from time to time as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all laws assented to by him in Our name, or reserved for the signification of Our Pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

V.[1] And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed for which the offender may be tried within Our said Dominion, to grant a pardon to any accomplice not being the actual perpetrator of such crime, who shall give such information as shall lead to the conviction of the principal offender; and further, to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within Our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said Dominion. And We do hereby direct and enjoin that Our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interest of Our Empire, or of any country or place beyond the jurisdiction of the Government of Our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of Our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V. R.

## CLXXXV

## SIR MICHAEL HICKS BEACH TO THE MARQUIS OF LORNE[2]

[Trans.: *Correspondence between Imperial and Canadian Governments*, 1880.]

Downing Street,
November 1, 1879.

My Lord,

I received from your Ministers, during their recent visit to England, a confidential memorandum, of which I enclose a printed copy, urging the necessity of providing further means for constant and confidential communication between her Majesty's Government and the Government of Canada, and recommending that a representative of the latter Government should be appointed to reside permanently in London, and that he should be granted a quasi-diplomatic position.

2. Her Majesty's Government are very sensible of the advantage which might result from the appointment by the Dominion Government of a gentleman who, residing in this country, would be fully empowered to explain their views on the various important questions connected with Canada, which, from time to time, demand consideration, and which might often be more satisfactorily, as

[1] For an important note on this clause, see Keith, *op. cit.*, pp. 1561, 1566.

[2] This and the following document illustrate the difficulties over the creation in London of the office of high commissioner for Canada. (Skelton, *Galt*, pp. 523 ff.)

well as more expeditiously, dealt with, if such means of oral communication were provided. Looking, however, to the position of Canada as an integral portion of the Empire, the relations of such a person with her Majesty's Government would not be correctly defined as being of a diplomatic character, and, while her Majesty's Government would readily accord to him a status in every way worthy of his important functions, his position would necessarily be more analogous to that of an officer in the home service, than to that of a Minister at a foreign court.

3. He would therefore primarily communicate with this Department on the various subjects which might be entrusted to him, and, while her Majesty's Government would readily avail themselves of any information he might afford, and give the fullest consideration to any representations he might make on behalf of the Canadian Government, it would, of course, rest with the Secretary of State for Foreign Affairs to determine in each case in what precise capacity his services might best be rendered in the event of any negotiations with a foreign court, on subjects affecting the interests of the Dominion. In some instances, for example, it might be desirable for him to remain in London and advise with her Majesty's Government there, while in other cases he might, in accordance with the precedents which have been quoted, be more usefully engaged in assisting her Majesty's representatives abroad.

4. I have deemed it necessary to refer to these details because it is desirable that there should be no misunderstanding as to the precise position which could be accorded by her Majesty's Government to an officer holding an appointment which the Government of Canada propose to establish, but I do not anticipate that the views which I have expressed will be felt by your Ministers as placing any insuperable difficulty in the way of the practical realization of their wishes; and I would only add that if such an appointment should be decided upon it would seem, for the reasons I have stated, more appropriate that the officer should be designated by the title of 'Dominion' or 'Canadian Commissioner' than by any title implying a diplomatic status or position.

I have, &c.
M. E. Hicks Beach.

Enclosure

*Memorandum.*

The policy of the Empire having devolved upon Canada the administration of the whole of British North America, and the care and protection of British interests therein, experience is daily showing the necessity of providing the means of constant and confidential communication between her Majesty's Government and her local advisers in Canada, in extension of the more formal relations subsisting through the correspondence of the Secretary of State for the Colonies with the Governor-General.

Canada has ceased to occupy the position of an ordinary possession of the Crown. She exists in the form of a powerful Central Government, having already no less than seven subordinate local executive and legislative systems, soon to be largely augmented by the development of the vast regions lying between Lake Superior and the Rocky Mountains. Her Central Government is becoming even more responsible than the Imperial Government for the maintenance of international relations towards the United States, a subject which will yearly require greater prudence and care, as the populations of the two countries extend along, and mingle across, the vast frontier line, three thousand miles in length.

The Canadian Government has, in short, become the trustee for the Empire at large, of half the continent of North America, and is bound to administer the trust not only for the benefit of the present limited population, but with the intention and policy of making the great resources of the Dominion in the highest measure promotive of the interests of the British people and the dignity of the Crown.

The organisation, government, and settlement of the vast regions of British North America are all subjects which the Canadian Government must desire to deal with in the common interest of all, while in trade and commerce it is daily becoming more evident that advantage would arise in definitely settling such arrangements between the United Kingdom and her vast dependency as may produce more thorough identity of interest and more uniform policy towards each other, and towards foreign nations.

It appears to the Canadian Government eminently desirable to provide for the fullest and most frank interchange of views with her Majesty's Government, and for the thorough appreciation of the policy of Canada on all points of general interest. Otherwise there appears to be danger of a feeling growing up of indifference, if not of actual antagonism and irritation on both sides. The idea must be avoided that the connexion of Canada with the British Empire is only temporary and unabiding, instead of being designed to strengthen and confirm the maintenance of British influence and power.

It is now being found in practice that there are constantly questions arising, connected with the administration of affairs in Canada, requiring discussions in a mode and to an extent wholly impracticable by the ordinary channel of correspondence, through the Governor-General; and periodical visits have to be made to London for this purpose by the important members of the Canadian Government, entailing serious inconvenience. At this moment the following subjects are thus under consideration: The Pacific Railway, and important collateral subjects; Treaties of Commerce with France and Spain; Esquimalt Graving Dock; Military Defence of Canada generally, and of British Columbia more especially; while the fishery and commercial clauses of the Washington Treaty may, at any moment, be reopened by the United States; with many other matters of importance connected with the better organization of the military force of the Dominion.

It is manifestly impossible that the views of the Canadian Government on such subjects can be submitted for the intelligent consideration of her Majesty's Government in any other mode than that of personal communication; and, as the subjects themselves relate to different departments of administration, the necessity arises for the absence from their posts at this moment of not less than three Ministers.

It is further submitted that the very large and rapidly augmenting commerce of Canada, and the increasing extent of her trade with foreign nations, is proving the absolute need of direct negotiations with them for the proper protection of her interests. In most of the treaties of commerce entered into by England, reference has only been had to their effect on the United Kingdom; and the colonies are excluded from their operation, a fact which has been attended with most unfortunate results to Canada, as relates to France. This is, to a certain extent, unavoidable, in consequence of the control of all customs having been granted to Canada; but a necessity has thus arisen for providing separate and distinct trade conventions with all foreign Powers with whom Canada has distinct trade. With the different views held by the Parliament of Canada on such subjects, from those of her Majesty's Government, there is a manifest difficulty in asking the latter to become responsible for the representations required to be made, and foreign Governments find it difficult to understand our present system. The Canadian Government therefore submit that, when occasion requires such negotiations to be undertaken, her Majesty's Government should advise her Majesty specially to accredit the representative of Canada to the foreign Court, by association for the special object with the resident Minister or other Imperial negotiator.

The suggestion is merely asking her Majesty's Government to establish as a rule the precedent which was created in 1871, when Sir John A. Macdonald was made a member of the Joint High Commission to Washington, and later, in 1874, when Mr. George Brown was officially associated with Sir Edward Thornton, at the instance of the Canadian Government, for the purpose of negotiating a Treaty of Commerce between Canada and the United States.

With the view of giving effect to the foregoing policy, the Government of Canada suggests that her Majesty's Government should consent to receive an official representative from Canada for the purpose of securing the most early and confidential communication of their views on all subjects; and that, when so requested, the proposed Minister should be duly accredited to foreign Courts in the manner above mentioned.

The Canadian Government desires to surround the proposed appointment with all the importance which should attach to an official charged with such high duties. He should, therefore, be selected from the Queen's Privy Council for Canada, and specially entrusted with the general supervision of all the political, material, and financial interests of Canada in England, subject to instructions from his Government.

The dignity of the office, and the advantage of its proper recognition, especially at foreign Courts, appear to require a more expressive title than that of Agent-General; it is therefore suggested that the designation should be Resident Minister, or such other name of equal import as her Majesty's Government may suggest.

The Canadian Government attaches great importance to this matter, and hopes that her Majesty's Government will see no insuperable difficulty in giving the Canadian Representative a quasi-diplomatic position at the Court of St. James, with the social advantages of such a rank and position.

JOHN A. MACDONALD,
S. L. TILLEY,
CHARLES TUPPER.

## CLXXXVI

## THE MARQUIS OF LORNE TO SIR M. E. HICKS BEACH

[Trans.: *Correspondence between Imperial and Canadian Governments*, 1880.]

Government House, Ottawa,
December 24, 1879.

Sir,

I have the honour to transmit herewith, for your consideration, a copy of an approved report of a Committee of the Privy Council respecting the appointment of a Canadian Representative to reside in England, to be styled 'High Commissioner of Canada,' to confer with her Majesty's Government on all important matters affecting the Dominion, which formed the subject of your despatch of the 1st November last.[1]

I have, &c.,
LORNE.

### ENCLOSURE

*Copy of a Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Governor-General, on the 22nd December, 1879.*

The Committee of Council have had under consideration the despatch from the Right Honourable the Secretary of State for the Colonies, dated 1st November last, upon the confidential memorandum of Sir John Macdonald, Sir Leonard Tilley, and Sir Charles Tupper, urging the necessity of providing further means for constant and confidential communication with her Majesty's Government, and also for the representation of Canada in the future negotiation of treaties of commerce with foreign nations.

The Committee desire to express their gratification at the manner in which their views have been met by her Majesty's Government, and they share in the conviction of Sir Michael Hicks Beach, that no insuperable difficulty exists in the realization of their wishes.

The Committee recognize the fact that Canada cannot, as an integral portion of the Empire, maintain relations of a strictly diplomatic character. But they respectfully submit that, while this is true as regards foreign nations, it does not accurately represent the actual state of facts in regard to the United Kingdom. Her Majesty's Government is unquestionably the supreme governing power of the Empire, but, under the British North America Act, self-governing powers have been conferred upon Canada in many most important respects, and her Majesty's Government may on these points be more correctly defined as representing the United Kingdom than the Empire at large. In considering many questions of the highest importance, such as the commercial and fiscal policy of the Dominion as affecting the United Kingdom, the promotion of Imperial interests in the administration and settlement of the interior of the Continent, and on many other subjects, indeed on all matters of internal concern, the Imperial Government and Parliament have so far transferred to Canada an independent control that their discussion and settlement have become subjects for mutual assent and concert, and thereby have, it is thought, assumed a quasi-diplomatic character as between her Majesty's Government representing the

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United Kingdon *per se* and the Dominion, without in any manner derogating from their general authority as rulers of the entire Empire.

The Committee would further respectfully submit, in elucidation of the views contained in the memorandum, that the Government of Canada, in respect of negotiations with foreign Powers, in no respect desire to be placed in the position of independent negotiators. On the contrary, they are fully convinced that it is through the influence and support of her Majesty's Government, and by the effective use of their carefully trained and thorough diplomatic service, that they can alone look for any measure of success. And it is with the view most thoroughly to satisfy foreign Governments of the identity of interests of her Majesty with themselves that they have so strongly sought the most official recognition possible for their representative. And in making their suggestion on this point, the Committee have had in mind the position assigned to the delegates from Canada in 1865 and 1866, which was that of belonging to the diplomatic corps, taking precedence after the foreign Ministers.

As the representative of the Governor-General and Executive Government of Canada, and especially when dealing with negotiations with any foreign Powers, the duties of the proposed officer will, the Committee consider, be of a nature more analogous to diplomatic than to home service, but they confidently leave this subject in the hands of her Majesty's Government, resting on the assurances conveyed in the despatch under consideration that her Majesty's Government will accord to their representative a status in every way worthy of his important functions.

The officer will certainly primarily communicate with the Secretary of State for the Colonies on the various subjects on which he may receive instructions to address her Majesty's Government, and the Committee do not doubt that every consideration will be given to such representations as he may make on behalf of the Canadian Government.

The Committee entirely agree that it will rest with the Secretary of State for Foreign Affairs to determine in each case in what precise capacity the services of the Canadian Officer can be best rendered in the event of negotiations with foreign Courts on subjects affecting the interests of the Dominion. Manifestly it would not be the desire of the Canadian Government, that in every case their representative should be personally associated with the British Minister at the foreign Courts, but only in such cases as might from their importance require it. On this point the Committee are fully assured that the Secretary of State for Foreign Affairs will meet their reasonable wishes as has been done in the cases cited.

The Committee understand, however, that in all cases of commercial treaties her Majesty's Government will direct early communication to be made to the Canadian representative so as to permit him to take the instructions of his Government, and to make such representations as may be called for to her Majesty's Government.

With reference to the designation of the proposed officer the Committee desire to accept the suggestion of her Majesty's Government. As, however, Commissioners are very frequently appointed for special services of minor importance, it is considered desirable to make the appointment to London distinctive by styling the officer 'High Commissioner of Canada in London', the Committee on this point being convinced that in reference especially to foreign Governments the designation and status are of real importance.

It is intended to create the office under statute at the next Session of the Canadian Parliament; but, should the public service require an earlier appointment, the Committee confidently rely on her Majesty's Government giving immediate effect to the views expressed in the despatch from the Secretary of State for the Colonies, which, it is believed, are correctly understood by the Canadian Government.

## CLXXXVII

## THE BRITISH NORTH AMERICA ACT, 1886

(49 & 50 Victoria, c. 35.)

*An Act respecting the Representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.*

25th June, 1886.

Whereas it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any Province:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:—

Provision by Parliament of Canada for representation of territories.

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any Province thereof.

Effect of Acts of Parliament of Canada.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act, shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor-General of Canada.

34 & 35 V., c. 28. & 31 V., c. 3.

It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act, or in *The British North America Act*, 1871, has effect, notwithstanding anything in *The British North America Act*, 1867, and the number of Senators or the number of Members of the House of Commons specified in the last-mentioned Act is increased by the number of Senators or of Members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada.

Short title and construction.

3. This Act may be cited as *The British North America Act*, 1886.

30 & 31 V., c. 3. 34 & 35 V., c. 28.

This Act, and *The British North America Act*, 1867, and *The British North America Act*, 1871, shall be construed together, and may be cited together as *The British North America Acts*, 1867 *to* 1886.

## CLXXXVIII

## THE MARQUIS OF RIPON TO THE GOVERNOR-GENERAL OF CANADA, ETC.

[Trans.: *Parliamentary Papers*, C. 7824.]

Downing Street,
June 28, 1895.

Sir,

In my despatch of even date, I communicated to you an expression of the views of her Majesty's Government on the Resolutions passed by the Colonial Conference at Ottawa in regard to the trade relations of the Empire.

2. In the course of the discussions there, a question of considerable importance was more than once alluded to, namely, the question of commercial agreements between her Majesty's Government and foreign Powers in regard to their trade with the Colonies.

Such Conventions have already been made on more than one occasion in regard to the trade of her Majesty's Dominions in North America with the United States of America, and recently with the Government of France in regard to the trade between that country and Canada; and the Cape Colony has also entered into a Customs Union with the neighbouring Independent Republic, the Orange Free State.

3. Although the areas within which such agreements are possible is now but limited, owing to the network of commercial Treaties by which the nations are bound together, there are still some Powers, such as France, with which agree-

ments of the kind could be made, either because no commercial treaty exists between them and this country, or because some of the Colonies have not adhered to the existing Treaty. It appears desirable, now that the same liberty of tariff legislation has been accorded to the Australian Colonies as has been enjoyed by Canada, the Cape Colony, and New Zealand, and that the Colonies generally are considering the question of extending and increasing their external commerce, that the views of her Majesty's Government on this question should be generally known.

4. In the first instance, it is advisable that the international position of such agreements and the procedure to be followed in regard to them should be made clear, and in this connexion I desire to quote from the able speech delivered by Sir Henry Wrixon at the meeting of the Conference on the 10th of June.

5. Referring to this question, he said:

'I do not know that I have ever thoroughly understood the position which the Imperial Government takes with regard to the power which they have already allowed to Canada and the Cape, because we all know that nations can only know one another through the supreme head. Each nation is an entity as regards any other nation, and I have no knowledge of how you could recognize a part of an Empire making arrangements for itself. If you look at the thing in the last resort, supposing conflicts arose, or cause of war, the foreign Power that had cause to complain of the breach of a commercial treaty must naturally look to the head of an Empire, and they could not be put off by telling them to look for satisfaction to the dependency. If any foreign Power made an arrangement with the Cape, and had cause to complain, and wanted to enforce any proviso, they must go to the Empire of Great Britain; and, therefore, as far as I can understand it, I am quite against any attempt to recognize the right of a dependency of the Empire to act on its own behalf. Everything must be done through the head of the Empire when we are dealing with foreign nations. One nation is one individual, and it can only deal with other nations on that basis; therefore I deliberately excluded any reference in my motion to that subject, and I may only add that I think it is quite unnecessary to refer to it, because we can have no doubt that the Imperial Government will extend the same consideration to all the dependencies of the Empire that it has already extended to Canada and the Cape, if in any case any dependency of the Empire shows that it has good ground for entering into a commercial treaty outside. I have not the slightest doubt that the Imperial Government would do for other dependencies what it has already done for the premier dependency of Canada and the Cape.

Hon. Mr. Fitzgerald: Do you wish it done by legislation?

Sir Henry Wrixon: No. I do not understand how it can be done, because I have no idea of a nation as anything else than one complete unity with regard to an outside nation, and I cannot understand a dependency of the Empire arranging with an outside Power; and I presume, where the Imperial Government has allowed Canada and the Cape to make arrangements, the Imperial Government itself has contracted and would be prepared to vindicate the conduct of the dependency in the last resort. I understand that when occasion arises the dependency informs the Imperial Government of its desire to enter into certain arrangements. The Imperial Government authorizes its Minister at the Court of the Power which is to be treated with to carry on that negotiation, and then, technically, it is the Empire which makes the Treaty. In our country some claimed more than this right. I repudiated any such position. I think it is not consistent with the unity of the Empire, and I added to that a reason why it was unnecessary—namely, because the Imperial Government will do for us what they have done for Canada and the Cape, and will help us to make a Treaty if we want to make a Treaty with any foreign Power.'

6. This speech not only indicates the procedure to be followed in the case of such arrangements, but clearly explains the reasons for it. A foreign Power can only be approached through her Majesty's Representative, and any agreement entered into with it, affecting any part of her Majesty's dominions, is an agreement between her Majesty and the Sovereign of the foreign State, and it is to her Majesty's Government that the foreign State would apply in case of any question arising under it.

7. To give the Colonies the power of negotiating treaties for themselves without

reference to her Majesty's Government would be to give them an international status as separate and sovereign States, and would be equivalent to breaking up the Empire into a number of independent States, a result which her Majesty's Government are satisfied would be injurious equally to the Colonies and to the Mother Country, and would be desired by neither.

The negotiation, then, being between her Majesty and the Sovereign of the foreign State, must be conducted by her Majesty's Representative at the Court of the foreign Power, who would keep her Majesty's Government informed of the progress of the discussion, and seek instructions from them as necessity arose.

It could hardly be expected, however, that he would be sufficiently cognisant of the circumstances and wishes of the Colony to enable him to conduct the negotiation satisfactorily alone, and it would be desirable generally, therefore, that he should have the assistance, either as a second Plenipotentiary or in a subordinate capacity, as her Majesty's Government think the circumstances require, of a delegate appointed by the Colonial Government.

If, as a result of the negotiations, any arrangement is arrived at, it must be approved by her Majesty's Government and by the colonial Government, and also by the Colonial Legislature if it involves legislative action, before the ratifications can be exchanged.

8. The same considerations which dictate the procedure to be followed have also dictated the conditions under which, though never distinctly formulated, her Majesty's Government have hitherto conducted such negotiations, and as to the propriety of which they are confident that no question can be raised.

9. These considerations are: the strict observance of existing international obligations, and the preservation of the unity of the Empire. The question, then, to be dealt with is how far these considerations necessarily limit the scope and application of any commercial arrangement dealing with the trade between one of her Majesty's Colonies and a foreign Power, both in respect of the concessions which may be offered by the Colony and the concessions which it seeks in return.

10. It is obvious that a Colony could not offer a foreign Power tariff concessions which were not at the same time to be extended to all other Powers entitled by Treaty to most-favoured-nation treatment in the Colony. In the Constitution Acts of some Colonies such a course is specifically prohibited, but, even where that is not the case, it is obvious that her Majesty could not properly enter into any engagements with a foreign Power inconsistent with her obligations to other Powers, and before any Convention or Treaty can be ratified, therefore, her Majesty's Government must be satisfied that it fulfils this condition, and also that any legislation for giving effect to it makes full provision for enabling her Majesty to fulfil her obligations, both to the Power immediately concerned, and to any other Powers whose rights under Treaty may be affected. To do otherwise would be a breach of public faith to which her Majesty's Government could not lend themselves in any way.

Further, her Majesty's Government regard it as essential that any tariff concessions proposed to be conceded by a Colony to a foreign Power should be extended to this country and to the rest of her Majesty's dominions.

As I have already pointed out, there are but few nations with which her Majesty's Government have not Treaties containing most-favoured-nation clauses, and to most of these Treaties all or some of the Responsible Government Colonies have adhered. And tariff advantages granted by a Colony, therefore, to a foreign Power would have to be extended to all Powers entitled by Treaty to most-favoured-nation treatment in the Colony, and her Majesty's Government presume that no Colony would wish to afford to, practically, all foreign nations better treatment than it accorded to the rest of the Empire of which it forms a part.

11. This point has already arisen in connexion with negotiations on behalf of Colonies with foreign States. When informal discussions with a view to a commercial arrangement between the United States of America and Canada took place in 1892, the delegates of the Dominion Government refused the demand of the United States that Canada should discriminate against the produce and manufactures of the United Kingdom, and the negotiations were broken off on this point. Similarly, when Newfoundland, in 1890, had made preliminary arrangements for a Convention with the United States under which preferential treatment might have been accorded to that Power, her Majesty's Government acknowledged the force of the protest made by Canada, and when the New-

foundland Government proposed to pass legislation to grant the concessions stipulated for by the United States, my predecessor, in a despatch dated the 26th of March, 1892, informed the Dominion Government that they might rest assured 'that her Majesty will not be advised to assent to any legislation discriminating directly against the products of the Dominion'.

12. It must not be forgotten that, as I have pointed out in my other despatch of this date, whilst the grant of preferential tariff treatment is a friendly act to the country receiving it, it is an unfriendly act to countries or places excluded from it, and her Majesty's Government are satisfied that the bonds which unite the various parts of the Empire together require that every Colony should accord to the rest at least as favourable terms as it grants to any foreign country. If a Colony were to grant preferential treatment to the produce of a foreign country and were to refuse to extend the benefit of that treatment to the Mother Country and the other Colonies, or some of them, such a step could not fail to isolate and alienate that Colony from the rest of the Empire, and attract it politically as well as commercially towards the favoured Power. Her Majesty's Government are convinced that the Colonies will agree that such a result would be fraught with danger to the interests of the Empire as a whole, and that they will also agree that it would be impossible for her Majesty's Government to assent to any such arrangement.

13. In regard to the other side of the question, namely as to the terms which a Colony seeks from a foreign Power, the considerations mentioned appear to require that a Colony should not endeavour in such a negotiation to obtain an advantage at the expense of other parts of her Majesty's dominions. In the case, therefore, of preference being sought by or offered to the Colony in respect of any article in which it competed seriously with other Colonies or with the Mother Country, her Majesty's Government would feel it to be their duty to use every effort to obtain the extension of the concession to the rest of the Empire, and in any case to ascertain as far as possible whether the other Colonies affected would wish to be made a party to the arrangement. In the event of this being impossible, and of the result to the trade of the excluded portions of the Empire being seriously prejudicial, it would be necessary to consider whether it was desirable, in the common interests, to proceed with the negotiation.

14. Her Majesty's Government recognize, of course, that in the present state of opinion among foreign Powers and many of the Colonies as to differential duties, and in a matter which, to some extent, would affect only a particular Colony, they would not feel justified in objecting to a proposal merely on the ground that it was inconsistent in this respect with the commercial and financial policy of this country.

But the guardianship of the common interests of the Empire rests with them, and they could not in any way be parties to, or assist in, any arrangements detrimental to these interests as a whole. In the performance of this duty it may sometimes be necessary to require apparent sacrifices on the part of a Colony, but her Majesty's Government are confident that their general policy in regard to matters in which Colonial interests are involved is sufficient to satisfy the Colonies that they will not, without good reason, place difficulties in the way of any arrangements which a Colony may regard as likely to be beneficial to it.

I have, etc.

RIPON.

## CLXXXIX

## THE ALBERTA ACT

### (4–5 Edward VII, c. 3.)

*An Act to establish and provide for the Government of the Province of Alberta.*

[Assented to July 20th, 1905.]

Preamble. Whereas in and by the British North America Act, 1871,[1] being chapter 28 of the Acts of the Parliament of the United Kingdom passed in the session thereof held in the 34th and 35th years of the reign of her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of

[1] No. CLXXVIII.

Canada, but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order, and good government of such province, and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter described, and to make provision for the government thereof, and the representation thereof, in the Parliament of Canada: Therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title. 1. This Act may be cited as the Alberta Act.

Province of Alberta formed; its boundaries. 2. The territory comprised within the following boundaries, that is to say, commencing at the intersection of the international boundary dividing Canada from the United States of America by the fourth meridian in the system of Dominion lands surveys; thence westerly along the said international boundary to the eastery boundary of the Province of British Columbia; thence northerly along the said eastern boundary of the Province of British Columbia to the north east corner of the said province; thence easterly along the parallel of the sixtieth degree of north latitude to the fourth meridian in the system of Dominion lands surveys, as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian to the point of commencement, is hereby established as a province of the Dominion of Canada, to be called and known as the Province of Alberta.

B. N. A. Acts 1867-1886, to apply. 3. The provisions of the British North America Acts, 1867 to 1886,[1] shall apply to the Province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said Province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.

Representation in the Senate. 4. The said province shall be represented in the Senate of Canada by four members; provided that such representation may, after the completion of the next decennial census, be from time to time increased to six by the Parliament of Canada.

Representation in the House of Commons. 5. The said province and the Province of Saskatchewan shall, until the termination of the Parliament of Canada, existing at the time of the first readjustment hereinafter provided for, continue to be represented in the House of Commons as provided by chapter 60 of the Statutes of 1903, each of the electoral districts defined in that part of the schedule to the said Act which relates to the North-West Territories, whether such district is wholly in one of the said provinces, or partly in one and partly in the other of them, being represented by one member.

Readjustment after next quinquennial census. 6. Upon the completion of the next quinquennial census for the said province, the representation thereof shall forthwith be readjusted by the Parliament of Canada, in such manner that there shall be assigned to the said province such a number of members as will bear the same proportion to the number of its population ascertained at such quinquennial census as the number sixty-five bears to the number of the population of Quebec as ascertained at the then last decennial census; and in the computation of the number of members for the said province a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded, and a fractional part exceeding one-half of that number shall be deemed equivalent to the whole number, and such readjustment shall take effect upon the termination of the parliament then existing.

Subsequent readjustments. (2) The representation of the said province shall thereafter be readjusted from time to time according to the provisions of section 51 of the British North America Act, 1867.

Election of members of House of Commons. 7. Until the Parliament of Canada otherwise provides, the qualifications of voters for the election of members of the House of Commons and the proceedings at and in connection with elections of such members shall, *mutatis mutandis*, be those prescribed by law at the time this Act comes into force with respect to such elections in the North-West Territories.

Executive Council. 8. The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant-Governor from time to time thinks fit.

[1] See No. CLXXXVII, Section 3.

Seat of Government.

9. Unless and until the Lieutenant-Governor in Council of the said province otherwise directs by proclamation under the Great Seal, the seat of Government of the said province shall be at Edmonton.

Powers of Lieutenant-Governor and Council.

10. All powers, authorities, and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant-Governor of the North-West Territories, with the advice, or with the advice and consent of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof, or by the said Lieutenant-Governor individually shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised by the Lieutenant-Governor of the said province, with the advice, or with the advice and consent of, or in conjunction with, the Executive Council of the said province, or any member or members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless to be abolished or altered by the Legislature of the said province.

Great Seal.

11. The Lieutenant-Governor in Council shall, as soon as may be after this Act comes into force, adopt and provide a Great Seal of the said province, and may, from time to time, change such seal.

Legislature.

12. There shall be a legislature for the said province consisting of the Lieutenant-Governor and one House to be styled the Legislative Assembly of Alberta.

Legislative Assembly.

13. Until the said Legislature otherwise provides, the Legislative Assembly shall be composed of twenty-five members to be elected to represent the electoral divisions defined in the schedule to this Act.

Election of members of Assembly.

14. Until the said legislature otherwise determines all the provisions of the law with regard to the constitution of the Legislative Assembly of the North-west Territories and the election of members thereof shall apply, *mutatis mutandis*, to the Legislative Assembly of the said province and the election of members thereof respectively.

Writs for first election.

15. The writs for the elections of the members of the first Legislative Assembly of the said province shall be issued by the Lieutenant-Governor and made returnable within six months after this Act comes into force.

Laws, Courts, and officers continued.

16. All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act, or as to which this Act contains no provisions intended as a substitute therefor, and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities, and functions, and all officers and functionaries, judicial, administrative, and ministerial, existing immediately before the coming into force of this Act in the territory hereby established as the province of Alberta, shall continue in the said province as if this Act and the Saskatchewan Act had not been passed; subject, nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, to be repealed, abolished, or altered by the Parliament of Canada, or by the legislature of the said province, according to the authority of the Parliament or of the said Legislature: Provided that all powers, authorities and functions which, under any law, order or regulation were, before the coming into force of this Act, vested in or exercisable by any public officer or functionary of the North-west Territories shall be vested in and exercisable in and for the said province by like public officers and functionaries of the said province when appointed by competent authority.

Proviso.

Province may abolish Supreme Court of N. W. T.

(2) The legislature of the province may, for all purposes affecting or extending to the said province, abolish the Supreme Court of the North-west Territories and the officers, both judicial and ministerial, thereof, and the jurisdiction, powers and authority belonging or incident to the said court: provided that, if, upon such abolition, the legislature constitutes a superior court of criminal jurisdiction, the procedure in criminal matters then obtaining in respect of the Supreme Court of the North-west Territories shall, until otherwise provided by competent authority, continue to apply to such superior court, and that the Governor in Council may at any time and from time to time declare all or any part of such procedure to be inapplicable to such superior court.

Proviso.

As to certain corporations in N. W. T.

(3) All societies or associations incorporated by or under the authority of the legislature of the North-west Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice or the right to practice any profession or trade in the North-west Territories, such as the legal or the medical profession, dentistry, pharmaceutical chemistry and

the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities and the division, disposition or transfer of its property.

As to Joint Stock Companies.

(4) Every joint-stock company lawfully incorporated by or under the authority of any ordinance of the North-west Territories shall be subject to the legislative authority of the province of Alberta if—

(a) The head office or the registered office of such company is at the time of the coming into force of this Act situate in the province of Alberta; and

(b) The powers and objects of this company are such as might be conferred by the Legislature of the said province and not expressly authorized to be executed in any part of the North-west Territories beyond the limits of the said province.

Education.

17. Section 93 of the British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:—

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-west Territories passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said Ordinances."

(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

(3) Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the union" is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.

Subsidy to province.

18. The following amounts shall be allowed as an annual subsidy to the province of Alberta and shall be paid by the Government of Canada, by half-yearly instalments in advance, to the said province, that is to say:—

For Government.

(a) for the support of the Government and Legislature, fifty thousand dollars;

In proportion to population.

(b) On an estimated population of two hundred and fifty thousand, at eighty cents per head, two hundred thousand dollars subject to be increased as hereinafter mentioned, that is to say: a census of the said province shall be taken in every fifth year, reckoning from the general census of one thousand nine hundred and one, and an approximate estimate of the population shall be made at equal intervals of time between each quinquennial and decennial census; and whenever the population, by any such census or estimate, exceeds two hundred and fifty thousand, which shall be the minimum on which the said allowance shall be calculated, the amount of the said allowance shall be increased accordingly, and so on until the population has reached eight hundred thousand souls.

Annual payment to province.

19. Inasmuch as the said province is not in debt, it shall be entitled to be paid and to receive from the Government of Canada, by half-yearly payments in advance, an annual sum of four hundred and five thousand three hundred and seventy-five dollars, being the equivalent of interest at the rate of five per cent. per annum on the sum of eight million one hundred and seven thousand five hundred dollars.

Compensation to province, for public lands.

20. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments in advance an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand shall be three hundred and seventy-five thousand dollars;

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars.

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

Further compensation.

(2) As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five

years, from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars.

Property in lands, etc.

21. All Crown lands, mines and minerals, and royalties incident thereto, and the interest of the Crown in the waters within the province under the North-west Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories.

Division of assets and liabilities between Saskatchewan and Alberta.

Arbitration.

22. All properties and assets of the North-west Territories shall be divided equally between the said province and the province of Saskatchewan, and the two provinces shall be jointly and equally responsible for all debts and liabilities of the North-west Territories: provided that, if any difference arises as to the division and adjustment of such properties, assets, debts, and liabilities, such difference shall be referred to the arbitration of three arbitrators, one of whom shall be chosen by the Lieutenant-Governor in Council of each province, and the third by the Governor in Council. The selection of such arbitrators shall not be made until the Legislatures of the provinces have met, and the arbitrator chosen by Canada shall not be resident of either province.

Rights of H. B. Co.

23. Nothing in this Act shall in any way prejudice or affect the rights or properties of The Hudson's Bay Company as contained in the conditions under which that Company surrendered Rupert's Land to the Crown.

Provision as to C. P. R. Co.

24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to chapter 1 of the statutes of 1881, being an Act respecting the Canadian Pacific Railway Company.

Commencement of Act.

25. This Act shall come into force on the first day of September, one thousand nine hundred and five.

Schedule (not printed).

## CXC

## THE SASKATCHEWAN ACT, 1905

(4–5 Edward VII, c. 42.)

*An Act to establish and provide for the Government of the Province of Saskatchewan.*

[Assented to 20th July, 1905.]

Preamble.

Whereas in and by the British North America Act, 1871, being chapter 28 of the Acts of the Parliament of the United Kingdom passed in the session thereof held in the 34th and 35th years of her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of such province and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter described, and to make provisions for the government thereof and the representation thereof in the Parliament of Canada: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as the Saskatchewan Act.

Province of Saskatchewan formed; its boundaries.

2. The territory comprised within the following boundaries, that is to say,—commencing at the intersection of the international boundary dividing Canada from the United States of America by the west boundary of the province of Manitoba, thence northerly along the said west boundary of the province of Manitoba to the north-west corner of the said province of Manitoba; thence continuing northerly along the centre of the road allowance between the twenty-ninth and thirtieth ranges west of the principal meridian in the system of Dominion lands surveys, as the said road allowance may hereafter be defined in accordance

with the said system, to the second meridian in the said system of Dominion lands surveys, as the same may hereafter be defined in accordance with the said system; thence northerly along the said second meridian to the sixtieth degree of north latitude; thence westerly along the parallel of the sixtieth degree of north latitude to the fourth meridian in the said system of Dominion lands surveys, as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian to the said international boundary dividing Canada from the United States of America; thence easterly along the said international boundary to the point of commencement,— is hereby established as a province of the Dominion of Canada, to be called and known as the province of Saskatchewan.

B.N.A. Acts, 1867 to 1886, to apply.

3. The provisions of the British North America Acts, 1867 to 1886, shall apply to the province of Saskatchewan in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

Representation in the Senate.

4. The said province shall be represented in the Senate of Canada by four members: Provided that representation may, after the completion of the next decennial census, be from time to time increased to six by the Parliament of Canada.

Representation in the House of Commons.

5. The said province and the province of Alberta shall, until the termination of the Parliament of Canada existing at the time of the first readjustment hereinafter provided for, continue to be represented in the House of Commons as provided by chapter 60 of the statutes of 1903, each of the electoral districts defined in that part of the schedule to the said Act which relates to the Northwest Territories, whether such district is wholly in one of the said provinces, or partly in one and partly in the other of them, being represented by one member.

Readjustment after next quinquennial census.

6. Upon the completion of the next quinquennial census for the said province, the representation thereof shall forthwith be readjusted by the Parliament of Canada in such manner that there shall be assigned to the said province such a number of members as will bear the same proportion to the number of its population ascertained at such quinquennial census as the number sixty-five bears to the number of the population of Quebec as ascertained at the then last decennial census; and in the computation of the number of members for the said province a fractional part not exceeding one half of the whole number requisite for entitling the province to a member shall be disregarded, and a fractional part exceeding one-half of that number shall be deemed equivalent to the whole number, and such readjustment shall take effect upon the termination of the Parliament then existing.

Subsequent readjustments.

(2) The representation of the said province shall thereafter be readjusted from time to time according to the provisions of section 51 of The British North America Act, 1867.

Election of members of House of Commons.

7. Until the Parliament of Canada otherwise provides, the qualifications of voters for the election of members of the House of Commons and the proceedings at and in connection with elections of such members shall, *mutatis mutandis*, be those prescribed by law at the time this Act comes into force with respect to such elections in the North-west Territories.

Executive Council.

8. The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant-Governor from time to time thinks fit.

Seat of Government.

9. Unless and until the Lieutenant-Governor in Council of the said province otherwise directs, by proclamation under the Great Seal, the seat of government of the said province shall be at Regina.

Powers of Lieutenant Governor and Council.

10. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant-Governor of the Northwest Territories, with the advice, or with the advice and consent of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof, or by the said Lieutenant-Governor individually, shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised by the Lieutenant-Governor of the said province, with the advice or with the advice and consent of, or in conjunction with, the Executive

Council of the said province or any member or members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless to be abolished or altered by the Legislature of the said province.

Great Seal.

11. The Lieutenant-Governor in Council shall, as soon as may be after this Act comes into force, adopt and provide a Great Seal of the said province, and may from time to time change such seal.

Legislature.

12. There shall be a legislature for the said province consisting of the Lieutenant-Governor and one House, to be styled the Legislative Assembly of Saskatchewan.

Legislative Assembly.

13. Until the said Legislature otherwise provides, the Legislative Assembly shall be composed of twenty-five members, to be elected to represent the electoral divisions defined in the schedule to this Act.

Election of members of Assembly.

14. Until the said Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the Northwest Territories and the election of members thereof shall apply, *mutatis mutandis*, to the Legislative Assembly of the said province and the election of members thereof respectively.

Writs for first election.

15. The writs for the election of the members of the first Legislative Assembly of the said province shall be issued by the Lieutenant-Governor and made returnable within six months after this Act comes into force.

Laws, courts and officers continued.

16. All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act, or as to which this Act contains no provision intended as a substitute therefor, and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial, existing immediately before the coming into force of this Act in the territory hereby established as the province of Saskatchewan, shall continue in the said province as if this Act and The Alberta Act had not been passed; subject, nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the said province, according to the authority of the Parliament or of the said Legislature: Provided that all powers, authorities and functions which under any law, order or regulation were, before the coming into force of this Act, vested in or exercisable by any public officer or functionary of the Northwest Territories shall be vested in and exercisable in and for the said province by like public officers and functionaries of the said province when appointed by competent authority.

Proviso.

Province may abolish Supreme Court of N.W.T.

(2) The Legislature of the province may, for all purposes affecting or extending to the said province, abolish the Supreme Court of the Northwest Territories, and the offices, both judicial and ministerial, thereof, and the jurisdiction, powers and authority belonging or incident to the said court: Provided that, if upon such abolition, the Legislature constitutes a superior court of criminal jurisdiction, the procedure in criminal matters then obtaining in respect of the Supreme Court of the Northwest Territories shall, until otherwise provided by competent authority, continue to apply to such superior court, and that the Governor in Council may at any time and from time to time declare all or any part of such procedure to be inapplicable to such superior court.

Proviso.

As to certain corporations in N.W.T.

(3) All societies and associations incorporated by or under the authority of the Legislature of the Northwest Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice of, or the right to practise, any profession or trade in the Northwest Territories, such as the legal or the medical profession, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities, and the division, disposition or transfer of its property.

As to joint-stock companies.

(4) Every joint-stock company lawfully incorporated by or under the authority of any ordinance of the Northwest Territories shall be subject to the legislative authority of the province of Saskatchewan if

(*a*) the head office or the registered office of such company is at the time of the coming into force of this Act situate in the province of Saskatchewan; and

(*b*) the powers and objects of such company are such as might be conferred by

the Legislature of the said province and not expressly authorized to be executed in any part of the Northwest Territories beyond the limits of the said province.

Education. 17. Section 93 of the *British North America Act, 1867*, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:—

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances."

(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

(3) Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed, in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

Subsidy to province. 18. The following amounts shall be allowed as an annual subsidy to the province of Saskatchewan, and shall be paid by the Government of Canada, by half-yearly instalments in advance, to the said province, that is to say,—

For government. (*a*) for the support of the Government and Legislature, fifty thousand dollars;

In proportion to population. (*b*) on an estimated population of two hundred and fifty thousand, at eighty cents per head, two hundred thousand dollars, subject to be increased as hereinafter mentioned, that is to say:—a census of the said province shall be taken in every fifth year reckoning from the general census of one thousand nine hundred and one, and an approximate estimate of the population shall be made at equal intervals of time between each quinquennial and decennial census; and whenever the population, by such census or estimate, exceeds two hundred and fifty thousand, which shall be the minimum on which the said allowance shall be calculated, the amount of the said allowance shall be increased accordingly, and so on until the population has reached eight hundred thousand souls.

Annual payment to province. 19. Inasmuch as the said province is not in debt, it shall be entitled to be paid and to receive from the Government of Canada, by half-yearly payments in advance, an annual sum of four hundred and five thousand three hundred and seventy-five dollars, being the equivalent of interest at the rate of five per cent per annum on the sum of eight million one hundred and seven thousand five hundred dollars.

Compensation to province for public lands. 20. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars;

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

Further compensation. (2) As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars.

Property in lands, etc. 21. All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under The Northwest Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and

roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the Northwest Territories.

Division of assets and liabilities between Alberta and Saskatchewan.

22. All properties and assets of the Northwest Territories shall be divided equally between the said province and the province of Alberta, and the two provinces shall be jointly and equally responsible for all debts and liabilities of the Northwest Territories: Provided that, if any difference arises as to the division and adjustment of such properties, assets, debts and liabilities, such difference shall be referred to the arbitrament of three arbitrators, one of whom shall be chosen by the Lieutenant-Governor in Council of each province, and the third by the Governor in Council. The selection of such arbitrators shall not be made until the Legislatures of the provinces have met, and the arbitrator chosen by Canada shall not be a resident of either province.

Arbitration.

Rights of H. B. Co.

23. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company as contained in the conditions under which that company surrendered Rupert's Land to the Crown.

Provision as to C.P.R. Co.

24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to chapter 1 of the statutes of 1881, being an Act respecting the Canadian Pacific Railway Company.

Commencement of Act.

25. This Act shall come into force on the first day of September, one thousand nine hundred and five.

Schedule (not printed).

## CXCI

## NATURE OF THE IMPERIAL CONFERENCES, 1905[1]

(Trans.: *Parliamentary Papers*, Cd. 2785.)

The Committee[2] at the outset are disposed to consider that any change in the title or status of the Colonial Conference should rather originate with, and emanate from, that body itself. At the same time, being fully alive to the desire of His Majesty's Government to draw closer the ties uniting the Colonies with each other and with the Motherland, they are prepared to give the proposals referred to their respectful consideration, and having done so, beg leave to offer the following observations:—

Your excellency's advisers are entirely at one with His Majesty's Government in believing that political institutions 'may often be wisely left to develop in accordance with circumstances and, as it were, of their own accord', and it is for this reason that they entertain with some doubt the proposal to change the name of the Colonial Conference to that of the Imperial Council, which they apprehend would be interpreted as marking a step distinctly in advance of the position hitherto attained in the discussion of the relations between the Mother Country and the Colonies. As the Committee understand the phrase, a Conference is a more or less unconventional gathering for informal discussion of public questions, continued, it may be, from time to time, as circumstances external to itself may render expedient, but possessing no faculty or power of binding action. The assembly of Colonial ministers which met in 1887, 1897, and 1902 appear to the Committee to fulfil these conditions. The term Council, on the other hand, indicates, in the view of your Excellency's ministers, a more formal assemblage, possessing an advisory and deliberative character, and in conjunction with the word "Imperial" suggesting a permanent institution which, endowed with a continuous life, might eventually come to be regarded as an encroachment upon the full measure of autonomous legislative and administrative power now enjoyed by all the self-governing Colonies.

The Committee, while not wishing to be understood as advocating any such change at the present time, incline to the opinion that the title 'Imperial Conference' might be less open to the objections they have indicated than the designation proposed by His Majesty's Government.

As regards the second suggestion of His Majesty's Government, the Committee are sensible that such a Commission would greatly facilitate the work of the

[1] For the history of the proposed organization of the conferences, see *Parliamentary Papers*, Cd. 2875.

[2] This document is an extract from a minute drawn up by the Canadian cabinet, November 13, 1905. It represents substantially the present attitude of Canada.

Conference, and at the same time enhance the dignity and importance of that assembly. They cannot, however, wholly divest themselves of the idea that such a Commission might conceivably interfere with the working of responsible government. While for this reason the Committee would not at present be prepared to adopt the proposal for the appointment of a permanent Commission, they feel that such a proposal emanating from His Majesty's Government should be very fully inquired into, and the Canadian representatives at the next Conference, whenever it may be held, would be ready to join the representatives of the sister Colonies in giving the whole matter their most careful consideration.

## CXCII

## SIR E. GREY TO HIS MAJESTY'S CHARGÉ D'AFFAIRES AT PARIS

[Trans: *Parliamentary Papers*, H. C. 129 (1910.)]

Foreign Office,
July 4, 1907.

Sir,

In my telegram of the 23rd of May I informed you that Sir W. Laurier desired to open negotiations for new commercial conventions with the French Government, and I requested that you would endeavour to assist him in the attainment of his object.

You are doubtless cognisant of the Marquis of Ripon's despatch of June 27th, 1895,[1] to the Governors of the principal British Colonies, in which it was laid down that commercial negotiations of this nature, being between his Majesty and the Sovereign of the foreign State, should be conducted by his Majesty's Representative at the Court of the foreign Power. A copy of this despatch is enclosed herewith.

I do not, however, think it necessary to adhere in the present case to the strict letter of this regulation, the object of which was to secure that negotiations should not be entered into and carried through by a Colony unknown to and independently of his Majesty's Government.

The selection of the negotiator is principally a matter of convenience, and, in the present circumstances, it will obviously be more practical that the negotiations should be left to Sir W. Laurier and to the Canadian Minister of Finance, who will doubtless keep you informed of their progress.

If the negotiations are brought to a conclusion at Paris, you should sign the Agreement jointly with the Canadian negotiator, who would be given full powers for the purpose.[2]

I am, &c.,
E. Grey.

## CXCIII

## THE CONSTITUTION OF THE IMPERIAL CONFERENCES, 1907

(Trans.: *Parliamentary Papers*, Cd. 3523.)

That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and the Governments of the self-governing Dominions beyond the seas. The Prime Minister of the United Kingdom will be *ex officio* President, and the Prime Ministers of the self-governing Dominions *ex officio* members, of the Conference. The Secretary of State for the Colonies will be an *ex officio* member of the Conference, and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions.

Such other ministers as the respective Governments may appoint will also be members of the Conference, it being understood that, except by special permission of the Conference, each discussion will be conducted by not more than two representatives from each Government, and that each Government will have only one vote.

[1] No. CLXXXVIII.

[2] The treaty of September 19, 1907, was signed by His Majesty's ambassador at Paris and by the Canadian ministers, W. S. Fielding and L. P. Brodeur.

That it is desirable to establish a system by which the several Governments represented shall be kept informed during the periods between the Conferences in regard to matters which have been or may be subjects for discussion, by means of a permanent secretarial staff, charged, under the direction of the Secretary of State for the Colonies, with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

That upon matters of importance requiring consultation between two or more Governments which cannot conveniently be postponed until the next Conference, or involving subjects of a minor character or such as call for detailed consideration, subsidiary Conferences should be held between representatives of the Governments concerned specially chosen for the purpose.

## CXCIV

## THE BRITISH NORTH AMERICA ACT, 1907

(7 Edward VII, c. 11.)

*An Act to make further provision with respect to the sums to be paid by Canada to the several Provinces of the Dominion.*

[9th August, 1907.]

Whereas an address has been presented to His Majesty by the Senate and Commons of Canada in the terms set forth in the schedule to this Act:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Payments to be made by Canada to provinces.

1. (1) The following grants shall be made yearly by Canada to every province, which at the commencement of this Act is a province of the Dominion, for its local purposes and the support of its Government and Legislature:

(*a*) A fixed grant—

Where the population of the province is under one hundred and fifty thousand, of one hundred thousand dollars;

Where the population of the province is one hundred and fifty thousand, but does not exceed two hundred thousand, of one hundred and fifty thousand dollars;

Where the population of the province is two hundred thousand, but does not exceed four hundred thousand, of one hundred and eighty thousand dollars;

Where the population of the province is four hundred thousand, but does not exceed eight hundred thousand, of one hundred and ninety thousand dollars;

Where the population of the province is eight hundred thousand, but does not exceed one million five hundred thousand, of two hundred and twenty thousand dollars;

Where the population of the province exceeds one million five hundred thousand, of two hundred and forty thousand dollars; and

(*b*) Subject to the special provisions of this Act as to the provinces of British Columbia and Prince Edward Island, a grant at the rate of eighty cents per head of the population of the province up to the number of two million five hundred thousand, and at the rate of sixty cents per head of so much of the population as exceeds that number.

(2) An additional grant of one hundred thousand dollars shall be made yearly to the province of British Columbia for a period of ten years from the commencement of this Act.

(3) The population of a province shall be ascertained from time to time in the case of the provinces of Manitoba, Saskatchewan, and Alberta respectively by the last quinquennial census of statutory estimate of population made under the Acts establishing those provinces or any other Act of the Parliament of Canada making provision for the purpose, and in the case of any other province by the last decennial census for the time being.

(4) The grants payable under this Act shall be paid half-yearly in advance to each province.

(5) The grants payable under this Act shall be substituted for the grants or subsidies (in this Act referred to as existing grants) payable for the like purposes

at the commencement of this Act to the several provinces of the Dominion under the provisions of section one hundred and eighteen of the British North America Act, 1867, or of any Order in Council establishing a province, or of any Act of the Parliament of Canada containing directions for the payment of any such grant or subsidy, and those provisions shall cease to have effect.

(6) The Government of Canada shall have the same power of deducting sums charged against a province on account of the interest on public debt in the case of the grant payable under this Act to the province as they have in the case of the existing grant.

(7) Nothing in this Act shall affect the obligation of the Government of Canada to pay to any province any grant which is payable to that province, other than the existing grant for which the grant under this Act is substituted.

(8) In the case of the provinces of British Columbia and Prince Edward Island, the amount paid on account of the grant payable per head of the population to the provinces under this Act shall not at any time be less than the amount of the corresponding grant payable at the commencement of this Act; and if it is found on any decennial census that the population of the province has decreased since the last decennial census, the amount paid on account of the grant shall not be decreased below the amount then payable, notwithstanding the decrease of the population.

Short title and interpretation.

2. This Act may be cited as the British North America Act, 1907, and shall take effect as from the first day of July nineteen hundred and seven.

## CXCV

## THE BRITISH NORTH AMERICA ACT, 1915

(5 & 6 George V, c. 45.)

(19th May, 1915.)

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Alteration of constitution of Senate, 30 and 31 Vict., c. 3.

1.—(1) Notwithstanding anything in the British North America Act, 1867, or in any Act amending the same, or in any Order in Council or terms or conditions of union made or approved under the said Acts or in any Act of the Canadian Parliament—

(i) The number of senators provided for under section twenty-one of the British North America Act, 1867, is increased from seventy-two to ninety-six:

(ii) The Divisions of Canada in relation to the constitution of the Senate provided for by section twenty-two of the said Act are increased from three to four, the fourth division to comprise the Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta, which four Divisions shall (subject to the provisions of the said Act and of this Act) be equally represented in the Senate, as follows:—Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta:

(iii) The number of persons whom by section twenty-six of the said Act the Governor-General of Canada may, upon the direction of His Majesty the King, add to the Senate is increased from three or six to four or eight, representing equally the four divisions of Canada:

(iv) In case of such addition being at any time made the Governor-General of Canada shall not summon any person to the Senate except upon a further like direction by His Majesty the King on the like recommendation to represent one of the four Divisions until such Division is represented by twenty-four senators and no more:

(v) The number of senators shall not at any time exceed one hundred and four:

(vi) The representation in the Senate to which by section one hundred and forty-seven of the British North America Act, 1867, Newfoundland would be entitled, in case of its admission to the Union, is increased from four to six members, and in the case of the admission of Newfoundland into the Union, notwithstanding anything in the said Act or in this Act, the normal number of senators shall be one hundred and two, and their maximum number one hundred and ten:

(vii) Nothing herein contained shall affect the powers of the Canadian Parliament under the British North America Act, 1886. 49 and 50 Vict., c. 35.

(2) Paragraphs (i) to (vi) inclusive of subsection (1) of this section shall not take effect before the termination of the now existing Canadian Parliament.

2. The British North America Act, 1867, is amended by adding thereto the following section immediately after section fifty-one of the said Act:— Constitution of House of Commons.

51A. Notwithstanding anything in this Act, a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such a province.

3. This Act may be cited as the British North America Act, 1915; and the British North America Acts, 1867 to 1886, and this Act may be cited together as the British North America Acts, 1867 to 1915. Short title.

## CXCVI

## THE BRITISH NORTH AMERICA ACT, 1916

(6 & 7 George V, c. 19.)

*An Act to amend the British North America Act, 1867.*

[1st June, 1916.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Notwithstanding anything in the British North America Act, 1867, or in any Act amending the same, or in any Order in Council, or terms or conditions of Union, made or approved under the said Act, or under any Act of the Canadian Parliament, the term of the Twelfth Parliament of Canada is hereby extended until the seventh day of October, nineteen hundred and seventeen. Extension of duration of Twelfth Parliament of Canada. 30 & 31 Vict., c. 3.

2. This Act may be cited as the British North America Act, 1916, and the British North America Acts, 1867 to 1915, and this Act may be cited together as the British North America Acts, 1867 to 1916. Short title.

## CXCVII

## BRITISH GOVERNMENT AND THE REQUISITION OF CANADIAN SHIPS, 1917

[*Minute of Council*, January 30, 1917.]

The question to be determined is not one of legal power but one of constitutional right. This distinction is well recognized in the Conventions which control the exercise of legislative power. For example, the Parliament of the United Kingdom has the legal power but not the constitutional right to legislate directly in respect of Canadian affairs and in doing so to repeal *pro tanto* the British North America Acts. It is submitted that the exercise of His Majesty's prerogative with respect to Canada must be governed by the like considerations. It is the Parliament of Canada alone which constitutionally can determine and prescribe the burdens to be borne by this Dominion or by any of its citizens for the purposes of this or any other war. Similarly when the prerogative of the Crown is to be exercised, the minister has no doubt that in respect of all matters which involve a contribution by citizens domiciled in this country, this prerogative must be exercised upon the advice of Your Excellency's Ministers and not upon the advice of the Government of the United Kingdom . . . If a ship be registered and the owners be domiciled and reside within Canada, the compulsory displacing of the

ownership or control of the ship in favour of the Crown for any public purpose should, independently of the actual location at the time of the ship itself, be likewise a matter for the consideration and sanction of the Government of Canada through the means with which the Government is constitutionally endowed.

## CXCVIII

## IMPERIAL AFFAIRS, 1917

### Imperial War Cabinet

(Trans.: *Parliamentary Papers*, Cd. 9005.)

The outstanding event of the year in the sphere of Imperial affairs has been the inauguration of the Imperial War Cabinet. This has been the direct outcome of the manner in which all parts of the Empire had thrown themselves into the war during the preceding years. Impalpable as was the bond which bound this great group of peoples together, there was never any doubt about their loyalty to the Commonwealth to which they belonged and to the cause to which it was committed by the declaration of war. Without counting the cost to themselves, they offered their men and their treasure in defence of freedom and public right. From the largest and most prosperous Dominion to the smallest island the individual and national effort has been one of continuous and unreserved generosity. It is not within the province of a Record, which is essentially concerned with the history of the administration of the United Kingdom, to describe in detail the achievements of the individual Dominions. Such an account, to do full justice, would require a separate record from each Oversea Government of its own internal administration. Surveying the position as a whole, however, great progress has been made during 1917 in the organization both of the man-power and other resources of the Empire for the prosecution of the war. The British Army is now a truly Imperial Army, containing units from almost every part of the Empire, including not only all the Dominions and India, but the West Indies, East and West Africa, and a large number of volunteers from the Malay States, the Straits Settlements, Ceylon, Hongkong and other places within and without the Empire. The total contribution of the British Commonwealth to the armies fighting for freedom is now 7,500,000 men. Particulars of the part played in the various military operations in all parts of the globe by the forces from different portions of the Empire will be found in the chapter dealing with the military history of the year.

Similarly, in the economic field, every part of the Empire has contributed what it could in manufactured articles, foodstuffs or raw materials towards the common pool, and the process of establishing public control over the sources of supply has made giant strides. Further reference to this matter will be found in the appropriate chapters later on.

The real development, however, of 1917 has been in the political sphere, and it has been the result of the intense activity of all parts of the Empire in prosecuting the war since August 1914.

It has been felt for some time in view of the ever-increasing part played by the Dominions in the war, that it was necessary that their Governments should not only be informed as fully as was possible of the situation, but that, as far as was practicable, they should participate, on a basis of complete equality, in the deliberations which determined the main outlines of Imperial policy. Accordingly, one of the first acts of the new Government was to send a telegram on December 14th inviting the Dominion Prime Ministers, not to an ordinary Imperial Conference but to a special War Conference of the Empire, in the following terms: "They therefore invite your Prime Minister to attend a series of special and continuous meetings of the War Cabinet in order to consider urgent questions affecting the prosecution of the war, the possible conditions on which, in agreement with our Allies, we could assent to its termination, and the problems which will then immediately arise. For the purpose of these meetings, your Prime Minister will be a member of the War Cabinet."

It was also felt, in view of the keen enthusiasm which had manifested itself in India for the cause for which the Empire had entered the war, and of the invaluable services which the Indian troops and others had rendered to the common cause, that it was right that India should also be represented at the Conference. A telegram was therefore also sent to the Viceroy of India to send

representatives to assist the Secretary of State for India in representing the views and needs of India at the Conference, thus giving India for the first time representation in the councils of the Empire.

These invitations were accepted by all the Dominions as well as by India. In some cases the Prime Ministers were able to come, and brought some of their colleagues as assessors on matters in which they had special experience. Canada was represented by the Right Hon. Sir Robert Borden, Prime Minister, and Sir George Perley, Minister of the Overseas Military Forces, who were accompanied by the Hon. Robert Rogers, Minister of Public Works, and the Hon. J. D. Hazen, Minister of Marine Fisheries and Naval Service.

. . . . . .

Practical convenience determined that the War Conference should be divided into two parts. On the one side were meetings of what came to be known as the Imperial War Cabinet, which consisted of the Oversea Representatives and the Members of the British War Cabinet sitting together as an Imperial War Cabinet for deliberation about the conduct of the war and for the discussion of the larger issues of imperial policy connected with the war. On the other side was the Imperial War Conference presided over by the Secretary of State for the Colonies, which consisted of the Oversea Representatives and a number of other Ministers, which discussed non-war problems or questions connected with the war but of lesser importance.

The proceedings of the Imperial War Cabinet which held fourteen meetings between March 20th and May 2nd, 1917, were secret. On the 17th May, however, the Prime Minister gave the House of Commons a short appreciation of the work of the Imperial War Cabinet, from which the following is an extract:—

"The Imperial War Cabinet was unanimous that the new procedure had been of such service not only to all its members but to the Empire that it ought not to be allowed to fall into desuetude. Accordingly, at the last session I proposed formally, on behalf of the British Government, that meetings of an Imperial Cabinet should be held annually, or at any intermediate time when matters of urgent Imperial concern require to be settled, and that the Imperial Cabinet should consist of the Prime Minister of the United Kingdom and such of his colleagues as deal specially with Imperial affairs, of the Prime Minister of each of the Dominions, or some specially accredited alternate possessed of equal authority, and of a representative of the Indian people to be appointed by the Government of India. This proposal met with the cordial approval of the Overseas Representatives, and we hope that the holding of an annual Imperial Cabinet to discuss foreign affairs and other aspects of Imperial policy will become an accepted convention of the British Constitution.

"I ought to add that the institution in its present form is extremely elastic. It grew, not by design, but out of the necessities of the war. The essence of it is that the responsible heads of the Governments of the Empire, with those Ministers who are specially entrusted with the conduct of Imperial Policy should meet together at regular intervals to confer about foreign policy and matters connected therewith, and come to decisions in regard to them which, subject to the control of their own Parliaments, they will then severally execute. By this means they will be able to obtain full information about all aspects of Imperial affairs, and to determine by consultation together the policy of the Empire in its most vital aspects, without infringing in any degree the autonomy which its parts at present enjoy. To what constitutional developments this may lead we did not attempt to settle. The whole question of perfecting the mechanism for 'continuous consultation' about Imperial and foreign affairs between the 'autonomous nations of an Imperial Commonwealth' will be reserved for the consideration of that special Conference which will be summoned as soon as possible after the war to readjust the constitutional relations of the Empire. We felt, however, that the experiment of constituting an Imperial Cabinet in which India was represented had been so fruitful in better understanding and in unity of purpose and action that it ought to be perpetuated, and we believe that this proposal will commend itself to the judgment of all the nations of the Empire."

In addition, it may perhaps be useful to quote the opinion of one of its Oversea Members, Sir Robert Borden, as to the significance of the meetings of the Imperial Cabinet. Speaking on April 3rd to the Empire Parliamentary Association, he said:—

"It may be that in the shadow of the war we do not clearly realise the measure

of recent constitutional development . . . the constitutional position which has arisen from the summoning of an Imperial War Cabinet. The British Constitution is the most flexible instrument of government ever devised. It is surrounded by certain statutory limitations, but they are not of a character to prevent the remarkable development to which I shall allude. The office of Prime Minister, thoroughly recognised by the gradually developed conventions of the Constitution, although entirely unknown to the formal enactments of the law, is invested with a power and authority which, under new conditions demanding progress and development, are of inestimable advantage. The recent exercise of that great authority has brought about an advance which may contain the germ and define the method of constitutional development in the immediate future. It is only within the past few days that the full measure of that advance has been consummated.

"For the first time in the Empire's history there are sitting in London two Cabinets, both properly constituted and both exercising well-defined powers. Over each of them the Prime Minister of the United Kingdom presides. One of them is designated as the 'War Cabinet,' which chiefly devotes itself to such questions touching the prosecution of the war as primarily concern the United Kingdom. The other is designated as the 'Imperial War Cabinet,' which has a wider purpose, jurisdiction and personnel. To its deliberations have been summoned representatives of all the Empire's self-governing Dominions. We meet there on terms of equality under the presidency of the First Minister of the United Kingdom; we meet there as equals; he is *primus inter pares*. Ministers from six nations sit around the Council Board, all of them responsible to their respective Parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility of its Ministers to their own electorate. For many years the thought of statesmen and students in every part of the Empire has centred around the question of future constitutional relations; it may be that now, as in the past, the necessity imposed by great events has given the answer.

"The Imperial War Cabinet as constituted to-day has been summoned for definite and specific purposes, publicly stated, which involve questions of the most vital concern to the whole Empire. With the constitution of that Cabinet, a new era has dawned and a new page of history has been written. It is not for me to prophesy as to the future significance of these pregnant events; but those who have given thought and energy to every effort for full constitutional development of the oversea nations may be pardoned for believing that they discern therein the birth of a new and greater Imperial Commonwealth."

The discussions and decisions of the Imperial War Conference, which met in the Colonial Office, have already been partly published in a Blue Book. The most important resolution passed by the Conference dealt with the future constitutional organisation of the Empire and was moved by Sir Robert Borden in the following terms:—

"The Imperial War Conference are of opinion that the readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the war, and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities.

"They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based on a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognise the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern and for such necessary concerted action, founded on consultation, as the several Governments may determine."

## CXCIX

## A CANADIAN MINISTER AT WASHINGTON, 1920 [1]

[Trans.: *Canadian Hansard* (1920), vol. iii, pp. 2177 ff.]

As a result of recent discussions an arrangement has been concluded between the British and Canadian Governments to provide more complete representation at Washington of Canadian interests than has hitherto existed. Accordingly, it has been agreed that His Majesty, on advice of his Canadian ministers, shall appoint a Minister Plenipotentiary who will have charge of Canadian affairs and will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from, and reporting direct to, the Canadian Government. In the absence of the Ambassador, the Canadian Minister will take charge of the whole embassy and of the representation of Imperial as well as Canadian interests.[2] He will be accredited by His Majesty to the President with the necessary powers for the purpose.

This new arrangement will not denote any departure either on the part of the British Government or of the Canadian Government from the principle of the diplomatic unity of the British Empire.

The need for this important step has been fully realized by both governments for some time. For a good many years there has been direct communication between Washington and Ottawa, but the constantly increasing importance of Canadian interests in the United States has made it apparent that Canada should be represented there in some distinctive manner, for this would doubtless tend to expedite negotiations, and naturally first-hand acquaintance with Canadian conditions would promote good understanding. In view of the peculiarly close relations that have always existed between the people of Canada and those of the United States, it is confidently expected as well that this new step will have the very desirable result of maintaining and strengthening the friendly relations and co-operation between the British Empire and the United States.

## CC

## CANADIAN CITIZENS AND NATIONALS, 1921

### A

### An Act respecting Immigration.

(Revised Statutes of Canada, 1927, c. 93.)

Short title.

1. This Act may be cited as the Immigration Act. 1910, c. 27, s. 1.

Definitions.

2. In this Act, and in all orders in council, proclamations and regulations made hereunder, unless the context otherwise requires,

* * * * * *

"Canadian citizen."

(*b*) "Canadian citizen" means

(i) a person born in Canada who has not become an alien;

(ii) a British subject who has Canadian domicile; or

(iii) a person naturalized under the laws of Canada who has not subsequently become an alien or lost Canadian domicile:

Proviso.

Provided that for the purpose of this Act a woman who has not been landed in Canada shall not be held to have acquired Canadian citizenship by virtue of her husband being a Canadian citizen; neither shall a child who has not been landed in Canada be held to have acquired Canadian citizenship through its father or mother being a Canadian citizen;

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[1] For the history, see Sir R. Borden, *Canada in the Commonwealth*, pp. 96 ff. (Oxford, 1929). This document is the announcement made to the Canadian parliament, May 10, 1920.

[2] This part of the proposal has been abandoned (see No. CCIII).

"Domicile." (*e*) "domicile" means the place in which a person has his home, or in which he resides, or to which he returns as his place of permanent abode, and does not mean the place where he resides for a mere special or temporary purpose;

Canadian domicile, how acquired. (i) Canadian domicile can only be acquired, for the purposes of this Act, by a person having his domicile for at least five years in Canada after having been landed therein within the meaning of this Act:

Certain time not counted for Canadian domicile. Provided that the time spent by a person while confined in or an inmate of any penitentiary, gaol, reformatory, prison or asylum for the insane in Canada shall not be counted in the period of residence in Canada which is necessary in order to acquire Canadian domicile; provided further that when an order is issued for the deportation of any person and an appeal therefrom has not been allowed by the Minister, or a permit to remain in Canada is issued by the Minister in the case of a person who has been previously landed and ordered deported, the time spent in Canada while such order of deportation or permit is in force shall not be counted in the period of residence which is necessary to acquire Canadian domicile; and

Classes who cannot acquire domicile. provided further that no person who belongs to the prohibited or undesirable classes within the meaning of section forty-one of this Act shall be capable of acquiring Canadian domicile;

Conditions under which Canadian domicile may be lost. (ii) Canadian domicile is lost, for the purposes of this Act, by a person voluntarily residing out of Canada not for a mere special or temporary purpose but with the present intention of making his permanent home out of Canada, or by any person belonging to the prohibited or undesirable classes within the meaning of this Act;

(iii) notwithstanding anything contained in the preceding subparagraph, when any citizen of Canada who is a British subject by naturalization, or any British subject not born in Canada having Canadian domicile shall have resided for one year outside of Canada, he shall be presumed to have lost Canadian domicile and shall cease to be a Canadian citizen for the purposes of this Act, and his usual place of residence shall be deemed to be his place of domicile during said year:

Domicile preserved by certificate of intention to retain Canadian domicile. Provided that such presumption may be rebutted by production of the certificate of any British diplomatic or consular officer, in such form as may be prescribed by the Minister, that such person appeared before him before the expiration of said period of one year and satisfied such officer of his reasonable intention to retain his Canadian domicile; and in the case of a person who is a naturalized British subject, such certificate shall be endorsed upon the certificate of naturalization of such person; the effect of such certificate shall be to extend said period for a further term of one year, and it may be further extended from year to year in the same manner so long as the officer giving the certificate is satisfied of the *bona fides* of the application for extension in each case, provided that the total period for which extension may be granted shall not exceed five years;

B

An Act to define Canadian Nationals and to provide for the Renunciation of Canadian Nationality.

(Revised Statutes of Canada, 1927, c. 21.)

[Assented to 3rd May, 1921.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Canadian Nationals defined. 1. The following persons are Canadian Nationals, viz:—

(*a*) any British subject who is a Canadian citizen within the meaning of *The Immigration Act*, chapter twenty-seven of the statutes of 1910, as heretofore amended;

(*b*) the wife of any such citizen;

(*c*) any person born out of Canada, whose father was a Canadian National at the time of that person's birth, or with regard to persons born before the passing of this Act, any person whose father at the time of such birth, possessed all the qualifications of a Canadian National, as defined in this Act.

Declaration renouncing Canadian nationality. 2. (*a*) Any person who by reason of his having been born in Canada is a Canadian National, but who at his birth or during his minority became under the law of the United Kingdom or of any self-governing Dominion of the British Empire,

a national also of that Kingdom or Dominion, and is still such a national, and,

(*b*) any person who though born out of Canada is a Canadian National;

may, if of full age and not under disability, make a declaration, renouncing his Canadian nationality. Such declaration may be made before a notary public or other person authorized to administer oaths in the locality in which the declaration is made, and may be in the form set out in the schedule to this Act. The declarant shall transmit his declaration to the Secretary of State of Canada and upon the Secretary of State being satisfied of the sufficiency of the declaration and that it has been duly executed, it shall be filed of record, whereupon the declarant shall cease to be a Canadian National, and a certified copy of the declaration shall be forwarded to the declarant with an endorsement thereon that the original declaration has been filed of record.

## CCI

## NEGOTIATION, SIGNATURE AND RATIFICATION OF TREATIES, 1923 [1]

[Trans.: *Parliamentary Papers*, Cmd. 1987.]

The principles governing the relations of the various parts of the Empire in connection with the negotiation, signature and ratification of Treaties seemed to the Conference to be of the greatest importance. Accordingly it was arranged that the subject should be fully examined by a Committee, of which the Secretary of State for Foreign Affairs was Chairman. The Secretary of State for the Colonies, the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa and Newfoundland, the Minister of External Affairs of the Irish Free State, and the Secretary of State for India as Head of the Indian Delegation, served on this Committee. With the assistance of the Legal Adviser to the Foreign Office, Sir C. J. B. Hurst, K.C.B., K.C., the following Resolution was drawn up and agreed to:—

"The Conference recommends for the acceptance of the governments of the Empire represented that the following procedure should be observed in the negotiation, signature and ratification of international agreements.

"The word 'treaty' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between Heads of States, signed by plenipotentiaries provided with Full Powers issued by the Heads of the States, and authorising the holders to conclude a treaty."

### I.

"1. *Negotiation.*

"(*a*) It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

"(*b*) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

"(*c*) In all cases where more than one of the governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those governments before and during the negotiations. In the case of treaties negotiated at International Conferences, where there is a British Empire Delegation, on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object.

"(*d*) Steps should be taken to ensure that those governments of the Empire

[1] These resolutions of the imperial conference of 1923 are the direct outcome of Canada's action in a treaty relating to fisheries with the United States. For a discussion of this treaty (the halibut treaty), see *Canada, House of Commons Debates*, vol. lviii, pp. 894 ff., 4632 ff. (March 6, June 27, 1923); Keith, *Journal of Comparative Legislation*, November 1923, pp. 161 ff.; ibid., February 1924; *The Sovereignity of the British Dominions*, pp. 370 ff. (London, 1929).

whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.

"2. *Signature.*

"(*a*) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

"(*b*) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the governments concerned.

"(*c*) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the governments of the Empire represented at the Conference should be continued, and the Full Powers should be in the form employed at Paris and Washington.

"3. *Ratification.*

"The existing practice in connection with the ratification of treaties should be maintained.

II.

"Apart from treaties made between Heads of States, it is not unusual for agreements to be made between governments. Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory governments, and signed by representatives of those governments, who do not act under Full Powers issued by the Heads of States: they are not ratified by the Heads of the States, though in some cases some form of acceptance or confirmation by the governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps should be taken to ensure that the government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views."

The Resolution was submitted to the full Conference and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connection with part I (3), setting out the existing procedure in relation to the ratification of Treaties. This procedure is as follows:

(*a*) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the government of that part:

(*b*) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the governments of those parts of the Empire concerned. It is for each government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that government.

## CCII

## IMPERIAL CONFERENCE, 1926

[Trans.: *Canada Parliamentary Papers*, No. 10, 1926-7.]

* * * * * *

### INTER-IMPERIAL RELATIONS

All the questions on the Agenda affecting Inter-Imperial Relations were referred by the Conference to a Committee of Prime Ministers and Heads of Delegations, of which Lord Balfour was asked to be Chairman. The members of the Committee included the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, the Vice-President of the Executive Council of the Irish Free State, the Secretary of State for India, as head of the Indian Delegation, the Secretary of State for Foreign Affairs,

and the Secretary of State for Dominion Affairs. Other Ministers and members of the Conference attended particular meetings.

The report of this Committee is printed *in extenso* below. It was unanimously adopted by the Conference on the 19th November and was published on the following day. In approving it, the Conference placed on record the great debt of gratitude which it owed to Lord Balfour for the services which he had rendered by presiding over the work of this Committee, and its hope that the Report would prove of permanent value and help to all parts of the British Empire.

* * * * * *

### I.—Introduction

We were appointed at the meeting of the Imperial Conference on the 25th October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire *inter se*, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we hope that we may have laid a foundation on which subsequent Conferences may build.

### II.—Status of Great Britain and the Dominions

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. But the principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require

also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.

### III.—Special position of India

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

### IV.—Relations between the various parts of the British Empire

Existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position as described in Section II of this Report. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. Our first task then was to examine these forms with special reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause, inconvenience in the conduct of Inter-Imperial Relations.

#### (a) *The Title of His Majesty the King*

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows:—

> "George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

Some time before the Conference met, it had been recognised that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had further been ascertained that it would be in accordance with His Majesty's wishes that any recommendation for change should be submitted to him as the result of discussion at the Conference.

We are unanimously of opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read:—

> "George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

#### (b) *Position of Governors General*

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor General[1] as His Majesty's representative in the Dominions. That position, though now generally well recognised, undoubtedly represents a development from an earlier stage when the Governor General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

It seemed to us to follow that the practice whereby the Governor General of

[1] The governor of Newfoundland is in the same position as the governor general of a Dominion.

a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor General.[1] It was thought that the recognised official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognised that the existing procedure might be open to criticism and accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after the Conference had completed its work, but it was recognised by the Committee, as an essential feature of any change or development in the channels of communication, that a Governor General should be supplied with copies of all documents of importance and in general should be kept as fully informed as is His Majesty the King in Great Britain of Cabinet business and public affairs.

### (c) *Operation of Dominion Legislation*

Our attention was also called to various points in connection with the operation of Dominion legislation, which, it was suggested, required clarification.

The particular points involved were:—

(*a*) The present practice under which Acts of the Dominion Parliaments are sent each year to London, and it is intimated, through the Secretary of State for Dominion Affairs, that "His Majesty will not be advised to exercise his powers of disallowance" with regard to them.

(*b*) The reservation of Dominion legislation, in certain circumstances, for the signification of His Majesty's pleasure which is signified on advice tendered by His Majesty's Government in Great Britain.

(*c*) The difference between the legislative competence of the Parliament at Westminster and of the Dominion Parliaments in that Acts passed by the latter operate, as a general rule, only within the territorial area of the Dominion concerned.

(*d*) The operation of legislation passed by the Parliament at Westminster in relation to the Dominions. In this connection special attention was called to such Statutes as the Colonial Laws Validity Act. It was suggested that in future uniformity of legislation as between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement.

We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions.

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that "the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada."

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each

[1] Compare, in connexion with the official channel of communication and consultation between governments, the following resolution adopted by the imperial war cabinet, July 30, 1918:—'I. (1) The Prime Ministers of the Dominions, as members of The Imperial War Cabinet, have the right of direct communication with the Prime Minister of the United Kingdom, and *vice versa*. (2) Such communications should be confined to questions of Cabinet importance. The Prime Ministers themselves are the judges of such questions. (3) Telegraphic communications between the Prime Ministers should, as a rule, be conducted through the Colonial Office machinery, but this will not exclude the adoption of more direct means of communication in exceptional circumstances. II. In order to secure continuity in the work of the Imperial War Cabinet and a permanent means of consultation during the war on the more important questions of common interest, the Prime Minister of each Dominion has the right to nominate a Cabinet Minister either as a resident or visitor in London to represent him at meetings of the Imperial War Cabinet to be held regularly between the plenary sessions. It was decided that arrangements should be made for the representation of India at those meetings.'
(*Parliamentary Papers*, Cmd. 325.)

Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned.

As already indicated, however, we are of opinion that there are points arising out of these considerations, and in the application of these general principles, which will require detailed examination, and we accordingly recommend that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines:—

"To enquire into, report upon, and make recommendations concerning—

"(i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorizing the disallowance for such legislation.

"(ii) (*a*) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.

(*b*) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion.

"(iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865,[1] and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."[2]

### (d) *Merchant Shipping Legislation*

Somewhat similar considerations to those set out above governed our attitude towards a similar, though a special, question raised in relation to Merchant Shipping Legislation. On this subject it was pointed out that, while uniformity of administrative practice was desirable, and indeed essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal Statute relating to Merchant Shipping, viz., the Merchant Shipping Act of 1894, more particularly clauses 735 and 736, with the constitutional status of the several members of the British Commonwealth of Nations.

In this case also we felt that, although, in the evolution of the British Empire, certain inequalities had been allowed to remain as regards various questions of maritime affairs, it was essential in dealing with these inequalities to consider the practical aspects of the matter. The difficulties in the way of introducing any immediate alterations in the Merchant Shipping Code (which dealt, amongst other matters, with the registration of British ships all over the world) were fully appreciated and it was felt to be necessary, in any review of the position, to take into account such matters of general concern as the qualifications for registry as a British ship, the status of British ships in war, the work done by His Majesty's Consuls in the interest of British shipping and seamen, and the question of Naval Courts at foreign ports to deal with crimes and offences on British ships abroad.

We came finally to the conclusion that, following a precedent which had been found useful on previous occasions, the general question of Merchant Shipping Legislation had best be remitted to a special Sub-Conference,[3] which could meet

[1] No. CLXX. [2] See No. CCV. [3] See pp. 724–33.

most appropriately at the same time as the Expert Committee, to which reference is made above. We thought that this special Sub-Conference should be invited to advise on the following general lines:—

> "To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

We took note that the representatives of India particularly desired that India, in view of the importance of her shipping interests, should be given an opportunity of being represented at the proposed Sub-Conference. We felt that the full representation of India on an equal footing with Great Britain and the Dominions would not only be welcomed, but could very properly be given, due regard being had to the special constitutional position of India as explained in Section III of this Report.

### (e) *Appeals to the Judicial Committee of the Privy Council*

Another matter which we discussed, in which a general constitutional principle was raised, concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected. It was, however, generally recognized that, where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

So far as the work of the Committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State was not pressed in relation to the present Conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference for discussion in relation to the facts of this particular case.

## V.—Relations with Foreign Countries

From questions specially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature, and ratification of treaties.[1] But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

### (a) *Procedure in Relation to Treaties*

We appointed a special Sub-Committee under the Chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined however in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

*Negotiation.*

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any

[1] See No. CCI.

Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorized to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

*Form of Treaty.*

Some treaties begin with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term "British Empire" with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term "British Empire." This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and, if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached as an appendix to the Committee's report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which is has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a Treaty between Heads of States should be avoided.

*Full Powers.*

The plenipotentiaries for the various British units should have full powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to

sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Government to advise the issue of full powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

*Signature.*

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.

*Coming into Force of Multilateral Treaties.*

In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

We think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. We would also recommend that the various Governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

(b) *Representation at International Conferences*

We also studied, in the light of the Resolution of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarized as follows:—

1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I. 1. (*c*) of the Treaty Resolution of 1923.

2. As regards international conferences summoned by foreign Governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government.

(*a*) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible.

(*b*) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible:—

(1) By means of a common plenipotentiary or plenipotentiaries, the issue of full powers to whom should be on the advice of all parts of the Empire participating.

(ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921.

(iii) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure that the form of invitation from the convening Government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as, for instance, by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

(c) *General Conduct of Foreign Policy*

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. Nevetheless, practially all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

(d) *Issue of Exequaturs to Foreign Consuls in the Dominions*

A question was raised with regard to the practice regarding the issue of exequaturs to Consuls in the Dominions. The general practice hitherto, in the case of all appointments of Consuls de Carrière in any part of the British Empire, has been that the foreign Government concerned notifies His Majesty's Government in Great Britain, through the diplomatic channel, of the proposed appointment and that, provided that it is clear that the person concerned is, in fact, a Consul de Carrière, steps have been taken, without further formality, for the issue of His Majesty's exequatur. In the case of Consuls other than those de Carrière, it has been customary for some time past to consult the Dominion Government concerned before the issue of the exequatur.

The Secretary of State for Foreign Affairs informed us that His Majesty's Government in Great Britain accepted the suggestion that in future any application by a foreign Government for the issue of an exequatur to any person who was to act as Consul in a Dominion should be referred to the Dominion Govern-

ment concerned for consideration and that, if the Dominion Government agreed to the issue of the exequatur, it would be sent to them for counter-signature by a Dominion Minister. Instructions to this effect had indeed already been given.

(e) *Channel of Communication between Dominion Governments and Foreign Governments*

We took note of a development of special interest which had occurred since the Imperial Conference last met, viz., the appointment of a Minister Plenipotentiary to represent the interests of the Irish Free State in Washington, which was now about to be followed by the appointment of a diplomatic representative of Canada. We felt that most fruitful results could be anticipated from the co-operation of His Majesty's representatives in the United States of America, already initiated, and now further to be developed. In cases other than those where Dominion Ministers were accredited to the Heads of Foreign States, it was agreed to be very desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political concern.

VI.—System of Communication and Consultation

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between Conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions *inter se*. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential, and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in section IV (b) of this Report, the Governor-General is no longer the representative of His Majesty's Government in Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in Great Britain.

We summed up our conclusions in the following Resolution which is submitted for the consideration of the Conference:—

> "The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of intercommunication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers."

* * * * * *

APPENDIX

[See Section V (*a*)]

Specimen Form of Treaty.

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King [*here insert His Majesty's full title*], His Majesty the King of Bulgaria, &c., &c.

.....

Desiring .....

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries:

The President.....

.....

His Majesty the King [*title as above*]:

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations),

*AB.*

for the Dominion of Canada,

*CD.*

for the Commonwealth of Australia,

*EF.*

for the Dominion of New Zealand,

*GH.*

for the Union of South Africa,

*IJ.*

for the Irish Free State,

*KL.*

for India,

*MN.*

.....

who, having communicated their full powers, found in good and due form, have agreed as follows:

.....

.....

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

*AB*.....
*CD*.....
*EF*.....
*GH*.....
*IJ* .....
*KL*.....
*MN* .....

(or if the territory for which each Plenipotentiary signs is to be specified:—

for Great Britain, &c.....*AB.*
for Canada .....*CD.*
for Australia.....*EF.*
for New Zealand .....*GH.*
for South Africa.....*IJ.*
for the Irish Free State.....*KL.*
for India .....*MN.*)

## CCIII

## THE CANADIAN MINISTER'S LETTERS OF CREDENCE TO THE UNITED STATES, 1926

George, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, etc., to the President of the United States of America, sendeth greetings:

Our Good Friend:

We have judged it expedient to confer the rank of Envoy Extraordinary and Minister Plenipotentiary upon our trusty and well-beloved the Honourable Charles Vincent Massey, member of our Privy Council of Canada, with the especial object of representing in the United States of America the interests of our Dominion of Canada.

We request that you will give entire credence to all that Mr. Massey may represent to you in our name, especially when he shall assure you of our esteem and regard, and of our hearty wishes for the welfare and prosperity of the United States of America. And so we commend you to the Protection of the Almighty.

Given at our Court of St. James, December 7, 1926, in the seventeenth year of our Reign, your good friend,

(Signed) George, Rex, Imperator.

## CCIV

## THE LETTERS OF CREDENCE OF THE UNITED STATES MINISTER TO CANADA, 1927

Calvin Coolidge, President of the United States of America. To His Majesty George V, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, etc.

Great and Good Friend:

I have conferred the rank of Envoy Extraordinary and Minister Plenipotentiary upon Mr. William Phillips, a distinguished citizen of the United States, with the especial object of representing in the Dominion of Canada the interests of the United States of America. He is well informed of the desire of this government to cultivate to the fullest extent the friendship which has so long existed between Your Majesty's Dominion of Canada and this country.

I, therefore, request Your Majesty to receive him favourably and to commend him to the officials of the Dominion of Canada in order that full credence may be given to what he shall say on the part of the United States of America. I have charged him to convey to you and to the Government of the Dominion of Canada the best wishes of this Government for the prosperity of the British Empire.

May God have Your Majesty in His Wise Keeping.

Your good friend,
CALVIN COOLIDGE.

By the President,
Joseph C. Grew,
Acting Secretary of State,
Washington, March 5, 1927.

## CCV

[*By permission of the Controller of H.M. Stationery Office.*]

## REPORT OF THE CONFERENCE ON THE OPERATION OF DOMINION LEGISLATION AND MERCHANT SHIPPING LEGISLATION, 1929

### PART II. ORIGIN AND PURPOSE OF CONFERENCE

*General.*

6. The present Conference owes its origin to a recommendation contained in the Report of the Imperial Conference of 1926.[1] The Inter-Imperial Relations Committee of that Conference made a recommendation, which was approved by the full Conference, that a Committee should be set up to examine and report upon certain questions connected with the operation of Dominion legislation, and that a Sub-Conference should be set up simultaneously to deal with merchant shipping legislation. This recommendation was approved by the Governments concerned, and the present Conference was established to carry out those tasks.

7. The Report of the Imperial Conference of 1926, in addition to setting forth the problems which required further examination, contained first and foremost a statement of the principles regulating the relations of the members of the British Commonwealth of Nations at the present day. It is desirable to recall these principles as they establish the basis and starting-point of the work of the present Conference.

8. The Report of the Imperial Conference declared in relation to the United Kingdom and the Dominions that

> "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

The Report recognized, however, that existing administrative, legislative and judicial forms were admittedly not wholly in accord with the position as described, a condition of things following inevitably from the fact that most of these forms dated back to a time well antecedent to the present stage of constitutional development.

[1] No. CCII.

9. With regard to the position of the Governor General, it was placed on record in the Report that it was an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor General is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in the United Kingdom, and that he is not the representative or agent of His Majesty's Government in the United Kingdom or of any Department of that Government.

10. With regard to certain points connected with Dominion legislation—disallowance, reservation, the extra-territorial operation of Dominion laws, and the Colonial Laws Validity Act [1]—the Imperial Conference of 1926, while recognizing that there would be grave danger in attempting in the limited time at their disposal any immediate pronouncement in detail on issues of such complexity, set forth certain principles which were considered to underlie the whole subject. As regards disallowance and reservation it was recognized that, apart from provisions embodied in Constitutions or in specific statutes expressly providing for reservation, it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs; and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the view of the Government of that Dominion. It was also suggested that the appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned; and it was stated that, with regard to the legislative competence of members of the British Commonwealth of Nations other than the United Kingdom, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, the constitutional practice is that legislation by the Parliament of the United Kingdom applying to a Dominion would only be passed with the consent of the Dominion concerned.

11. It was, however, considered that there were points arising out of these considerations, and in the application of these general principles, which required detailed examination. In the first place, there remains a considerable body of law passed by the Parliament of the United Kingdom which still applies in relation to the Dominions and at present cannot be repealed or modified by Dominion Parliaments; secondly, under the existing system His Majesty's Government in the United Kingdom retains certain powers with reference to Dominion legislation; and, thirdly, while the Parliament of the United Kingdom can legislate with extra-territorial effect, there is doubt as to the powers in this respect of Dominion Parliaments. The Imperial Conference accordingly recommended that steps should be taken by the United Kingdom and the Dominions to set up a Committee with terms of reference on the following lines:—

> "To enquire into, report upon, and make recommendations concerning—
>
> "(i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorizing the disallowance of such legislation.
>
> "(ii) (*a*) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.
>
> "(*b*) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion.
>
> "(iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of existing relations between the various members of the British Commonwealth of Nations as described in this Report" (i.e. the Report of the Imperial Conference).

*Merchant Shipping.*

12. The Imperial Conference of 1926 also considered the general question of Merchant Shipping legislation. On this subject the Conference pointed out that,

[1] No. CLXX.

while uniformity of administrative practice was desirable and, indeed, essential as regards the Merchant Shipping legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal statute relating to Merchant Shipping, viz. the Merchant Shipping Act, 1894, with the present constitutional status of the several members of the British Commonwealth of Nations. The Conference came finally to the conclusion that the general question of Merchant Shipping legislation should be remitted to a special Sub-Conference which it was thought might most appropriately meet at the same time as the Committee already mentioned.

13. On further examination of the problems involved, it appeared more convenient that the Committee and the special Sub-Conference should be organized as a single Conference. After consultation between the respective Governments this view received general acceptance, and the terms of reference to the present Conference accordingly include, in addition to those set out above, a reference—

> "To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to Merchant Shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

*Position of India.*

14. The Imperial Conference of 1926 recommended that arrangements should be made for the representation of India at the Sub-Conference on Merchant Shipping questions; but did not suggest that India should be represented on the proposed Committee. As a result, however, of preliminary examination of the matters falling within the scope of the terms of reference to the proposed Committee, it appeared that, while the position of India was a special one, some of the matters likely to come up for detailed discussion at the present Conference might be of interest to that country. It was consequently agreed that arrangements should be made for the representation of India at the present Conference for the discussion of the subject of Merchant Shipping and of such other particular subjects arising at the Conference as might be of direct interest to India.

*The questions before the Conference.*

15. In approaching the inquiry into the subjects referred to them, the present Conference have not considered it within the terms of their appointment to re-examine the principles upon which the relations of the members of the Commonwealth are now established. These principles of freedom, equality, and co-operation have slowly emerged from the experience of the self-governing communities now constituting that most remarkable and successful experiment in co-operation between free democracies which has ever been developed, the British Commonwealth of Nations; they have been tested under the most trying conditions and have stood that test; they have been given authoritative expression by the Governments represented at the Imperial Conference of 1926; and have been accepted throughout the British Commonwealth. The present Conference have therefore considered their task to be merely that of endeavouring to apply the principles, laid down as directing their labours, to the special cases where law or practice is still inconsistent with those principles, and to report their recommendations as a preliminary to further consideration by His Majesty's Governments in the United Kingdom and in the Dominions.

16. The three heads of the terms of reference to the Conference, apart from the question of Merchant Shipping which is dealt with separately, may be classified briefly as dealing with:—

(i) Disallowance and Reservation;
(ii) The extra-territorial operation of Dominion legislation;
(iii) The Colonial Laws Validity Act, 1865.

17. It seems conveneint to give some indication of the origin and nature of the questions which arise in each case, and then to state the recommendations of the Conference under each head.

## PART III. DISALLOWANCE AND RESERVATION

### (1) *Disallowance.*

*Present Position.*

18. The power of disallowance means the right of the Crown, which has hitherto been exercised (when occasion for its exercise has arisen) on the advice of

Ministers in the United Kingdom, to annul an Act passed by a Dominion or Colonial Legislature.

19. The prerogative or statutory powers of His Majesty the King to disallow laws made by the Parliament of a Dominion, where such powers still subsist, have not been exercised for many years, and it is desirable that the position with regard to disallowance should now be made clear.

20. Whatever the historical origin of the power of disallowance may have been, it has now found a statutory expression in most of the Dominion Constitutions and accordingly the power of disallowance in reference to Dominion legislation exists and is regulated solely by the statutory provisions of those Constitutions.[1]

21. Section 58 of the New Zealand Constitution Act, 1852, and Section 56 of the British North America Act, 1867,[2] empower the King in Council to disallow any Act of the Parliament of either Dominion within a period of two years from the receipt of the Act from the Governor General. In Section 59 of the Constitution of the Commonwealth of Australia (1900) and Section 65 of the South Africa Act, 1909, the period prescribed is one year after the assent of the Governor General has been given. The Irish Free State Constitution contains no provision for disallowance.

22. A distinction must, of course, be drawn between the existence of these provisions and their exercise. In the early stages of responsible government cases of disallowance occurred not infrequently merely for the reason that the legislation disallowed did not commend itself on its merits to the Government of the United Kingdom. This practice did not, however, long survive, for it was realized that under the conditions of self-government the power of disallowance should only be exercised where grave Imperial interests were concerned, and that such intervention was improper with regard to legislation of purely domestic concern. In fact, the power of disallowance has not been exercised in relation to Canadian legislation since 1873 or to New Zealand legislation since 1867; it has never been exercised in relation to legislation passed by the Parliaments of the Commonwealth of Australia or the Union of South Africa.

*Recommendations.*

23. The Conference agree that the present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation. Accordingly, those Dominions who possess the power to amend their Constitutions in this respect can, by following the prescribed procedure, abolish the legal power of disallowance if they so desire. In the case of those Dominions who do not possess this power, it would be in accordance with constitutional practice that, if so requested by the Dominion concerned, the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

*Special Position in relation to the Colonial Stock Act, 1900.*

24. The special position in relation to the Colonial Stock Act, 1900, may conveniently be dealt with in this place. This Act empowers His Majesty's Treasury in the United Kingdom to make regulations governing the admission of Dominion stocks to the list of trustee securities in the United Kingdom. One of the conditions prescribed by the Treasury which at present govern the admission of such stocks is a requirement that the Dominion government shall place on record a formal expression of its opinion that any Dominion legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting the stock to the injury of the stockholder or to involve a departure from the original contract in regard to the stock would properly be disallowed. We desire to place on record our opinion that, notwithstanding what has been said in the preceding paragraph, where a Dominion Government has complied with this condition and there is any stock (of either existing or future issues of that Government) which is a trustee security in consequence of such compliance, the right of disallowance in respect of such legislation must remain and can properly be exercised. In this respect alone is there any exception to the position as declared in the preceding paragraph.

25. The general question of the terms on which loans raised by one part of the British Commonwealth should be given the privilege of admission to the Trustee List in another part falls naturally for determination by the Government

[1] This does not apply to Newfoundland, where the constitution is based on letters patent and not on statute.

[2] No. CLXXIII.

of the latter, and it is for the other Governments to decide whether they will avail themselves of the privilege on the terms specified. It is right, however, to point out that the condition regarding disallowance makes it difficult and in one case impossible for certain Dominions to take advantage of the provisions of the Colonial Stock Act, 1900.

(2) *Reservation.*

*Present Position.*

26. Reservation means the withholding of assent by a Governor General or Governor to a Bill duly passed by the competent Legislature in order that His Majesty's pleasure may be taken thereon.

27. Statutory provisions dealing with reservation of Bills passed by Dominion Parliaments may be divided into (1) those which confer on the Governor General a discretionary power of reservation and (2) those which specifically oblige the Governor General to reserve Bills dealing with particular subjects.

28. The discretionary power of reservation is dealt with in Sections 56 and 59 of the New Zealand Constitution Act, 1852, Sections 55 and 57 of the British North America Act, 1867, Sections 58 and 60 of the Constitution of the Commonwealth of Australia (1900), Sections 64 and 66 of the South Africa Act, 1909, and Article 41 of the Constitution of the Irish Free State.

29. Provisions requiring Bills relating to particular subjects to be reserved by the Governor General for the signification of His Majesty's pleasure exist in the Australian, New Zealand, and South African Constitutions. By Section 65 of the New Zealand Constitution Act, 1852, the General Assembly of New Zealand is given power to alter the sums allocated by the Schedule to the Act for the Governor's salary, the Judges, the establishment of the general government and native purposes respectively, but any Bill altering the salary of the Governor or the sum allocated to native purposes must be reserved. By Section 74 of the Constitution of the Commonwealth of Australia (1900), it is provided that the Commonwealth Parliament may make laws limiting the matters in which special leave to appeal from the High Court of Australia to His Majesty in Council may be asked, but proposed laws containing any such limitation shall be reserved by the Governor General for the signification of His Majesty's pleasure. The South Africa Act, 1909, contains three sections relating to the reservation of Bills dealing with particular subjects. Section 106 contains provisions similar to those in Section 74 of the Constitution of the Commonwealth of Australia. Section 64 provides that all Bills repealing or amending that section or any of the provisions of Chapter IV of the Act under the heading "House of Assembly" and all Bills abolishing provincial councils or abridging the powers conferred on them under Section 85 shall be reserved. By paragraph 25 of the Schedule to the Act, which lays down the terms and conditions on which the Governor in Council may undertake the government of native territories if transferred to the Union under Section 151, it is provided that all Bills to amend or alter the provisions of this Schedule shall be reserved. There is no provision requiring reservation in either the Canadian or Irish Free State Constitutions.

30. Provisions relating to compulsory reservation are also to be found in the Colonial Courts of Admiralty Act, 1890, and in the Merchant Shipping Act, 1894. These provisions are dealt with in another section of this Report.

31. The power of reservation had its origin in the instructions given by the Crown to the Governor of a Colony as to the exercise by him of the power to assent to Bills passed by the colonial legislative body. It has been embodied in one form or another in the Constitutions of all the Dominions and may be regarded in their case as a statutory and not a prerogative power. Its exercise has involved the intervention of the Government of the United Kingdom at three stages—in the instructions to the Governor concerning the classes of Bills to be reserved, in the advice tendered to the Crown regarding the giving or withholding assent to Bills actually reserved, and in the forms in use for signifying the Royal pleasure upon a reserved Bill. Reservation found a place naturally enough in the older colonial system under which the Crown exercised supervision over the whole legislation and administration of a Colony through Ministers in the United Kingdom. In the earlier stages of self-government supervision over legislation did not at once disappear, but it was exercised in a constantly narrowing field with the development of the principles and practice of responsible government. As regards the Dominions, it gradually came to be realized that the attainment

of the purposes of reservation must be sought in other ways than through the use of powers by the Government of the United Kingdom. The present constitutional position is set forth in the statement of principles governing the relations of the United Kingdom and the Dominions contained in the Report of the Imperial Conference of 1926; and we have to apply these principles to the power of reservation and its exercise in the conditions now established.

*Recommendations.*

*Discretionary Reservation.*

32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established first that the power of discretionary reservation if exercised at all can only be exercised in accordance with the constitutional practice in the Dominion governing the exercise of the powers of the Governor General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the King to give the Governor General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

*Compulsory Reservation—Principle governing the signification of the King's pleasure.*

33. In cases where there is a special provision requiring the reservation of Bills dealing with particular subjects, the position would in general fall within the scope of the doctrine that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

34. The same principle applies to cases where alterations of a Constitution are required to be reserved.

*Abolition of the Power of Reservation (Discretionary or Compulsory).*

35. As regards the continued existence of the power of reservation, certain Dominions possess the power by amending their Constitutions to abolish the discretionary power and to repeal any provisions requiring reservation of Bills dealing with particular subjects, and it is, therefore, open to those Dominions to take the prescribed steps to that end if they so desire.

36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

## PART IV. THE EXTRA-TERRITORIAL OPERATION OF DOMINION LEGISLATION

*The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.*

37. In the case of all Legislatures territorial limitations upon the operation of legislation are familiar in practice. They arise from the express terms of statutes or from rules of construction applied by the Courts as to the presumed intention of the Legislature, regard being had to the comity of nations and other considerations. But in the case of the legislation of Dominion Parliaments there is also an indefinite range in which the limitations may exist not merely as rules of interpretation but as constitutional limitations. So far as these constitutional limitations exist there is a radical difference between the position of Acts of the Parliament of the United Kingdom in the United Kingdom itself and Acts of a Dominion Parliament in the Dominion.

38. The subject is full of obscurity and there is conflict in legal opinion as expressed in the Courts and in the writings of jurists both as to the existence of the limitation itself and as to its extent. There are differences in Dominion

Constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases, and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. The state of the law has compelled legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.

39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operation; and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.

*Recommendations.*

40. We are agreed that the most suitable method of placing the matter beyond possibility of doubt would be by means of a declaratory enactment in the terms set out below passed, with the consent of all the Dominions, by the Parliament of the United Kingdom.

41. With regard to the extent of the power so to be declared, we are of opinion that the recognition of the powers of a Dominion to legislate with extra-territorial effect should not be limited either by reference to any particular class of persons (e.g., the citizens of the Dominion) or by any reference to laws "ancillary to provision for the peace, order and good government of the Dominion" (which is the phrase appearing in the terms of reference to the Conference).

42. We regard the first limitation as undesirable in principle. With respect to the second, we think that the introduction of a reference to legislation ancillary to peace, order and good government is unnecessary, would add to the existing confusion on the matter, and might diminish the scope of the powers the existence of which it is desired to recognize.

43. After careful consideration of possible alternatives, we recommend that the clause should be in the following form:—

"*It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.*"

44. In connection with the exercise of extra-territorial legislative powers, we consider that provision should be made for the customary extra-territorial immunities with regard to internal discipline enjoyed by the armed forces of one Government when present in the territory of another Government with the consent of the latter. Such an arrangement would be of mutual advantage and common convenience to all parts of the Commonwealth, and we recommend that provision should be made by each member of the Commonwealth to give effect to such customary extra-territorial immunities within its territory as regards other members of the Commonwealth.

## PART V. COLONIAL LAWS VALIDITY ACT

*Present Position.*

45. The circumstances in which the Colonial Laws Validity Act, 1865, came to be enacted are so well known that only a brief reference to them is necessary in this Report.

46. From an early stage in the history of Colonial development the theory had been that there was a common law rule that legislation by a Colonial Legislature was void if repugnant to the law of England. This rule was apparently based on the assumption that there were certain fundamental principles of English law which no Colonial law could violate, but the scope of these principles was by no means clearly defined.

47. A series of decisions, however, given by the Supreme Court of South

Australia in the middle of the nineteenth century applied the rule so as to invalidate several of the Acts of the Legislature of that Colony. It was soon realized that, if this interpretation of the law were sound, responsible Government, then recently established by the release of the Australian Colonies from external political control, would to a great extent be rendered illusory by reason of legal limitations on the legislative power which were then for the first time seen to be far more extensive than had been supposed. The serious situation which thus developed in South Australia led to an examination of the whole question by the Law Officers of the Crown in England, whose opinion, while not affirming the extensive application of the doctrine of repugnancy upheld by the South Australian Court, found the test of repugnancy to be of so vague and general a kind as to leave great uncertainty in its application. They accordingly advised legislation to define the scope of the doctrine in new and precise terms. The Colonial Laws Validity Act, 1865, was enacted as the result of their advice.

48. The Act expressly conferred upon Colonial Legislatures the power of making laws even though repugnant to the English common law, but declared that a Colonial law repugnant to the provisions of an Act of the Parliament of the United Kingdom extending to the Colony either by express words or by necessary intendment should be void to the extent of such repugnancy. The Act also removed doubts which had arisen regarding the validity of laws assented to by the Governor of a Colony in a manner inconsistent with the terms of his Instructions.

49. The Act, at the time when it was passed, without doubt extended the then existing powers of Colonial legislatures. This has always been recognized, but it is no less true that definite restrictions of a far-reaching character upon the effective exercise of those powers were maintained and given statutory effect. In important fields of legislation actually covered by statutes extending to the Dominions the restrictions upon legislative power have caused and continue to cause practical inconvenience by preventing the enactment of legislation adapted to their special needs. The restrictions in the past served a useful purpose in securing uniformity of law and co-operation on various matters of importance: but it follows from the Report of the Imperial Conference of 1926 that this method of securing uniformity, based as it was upon the supremacy of the Parliament of the United Kingdom, is no longer constitutionally appropriate in the case of the Dominions, and the next step is to bring the legal position into accord with the constitutional. Moreover, the interpretation of the Act has given rise to difficulties in practice, especially in Australia, because it is not always possible to be certain whether a particular Act does or does not extend by necessary intendment to a Dominion, and, if it does, whether all or any of the provisions of a particular Dominion law are or are not repugnant to it.

*General Recommendations.*

50. We have therefore proceeded on the basis that effect can only be given to the principles laid down in the Report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

51. We think it necessary, however, that there should also be a substantive enactment declaring the powers of the Parliament of a Dominion, lest a simple repeal of the Colonial Laws Validity Act might be held to have restored the old common law doctrine.

52. It may be stated in this connection that, having regard to the nature of the relations between the several members of the British Commonwealth and the constitutional position of the Governor General of a Dominion, it has not been considered necessary to make any express provision for the possibility, contemplated in Section 4 of the Colonial Laws Validity Act, of colonial laws assented to by the Governor being held void because of any instructions with reference to such laws or the subjects thereof contained in the Letters Patent or Instrument authorizing the Governor to assent to laws for the peace, order, or good government of the Colony.

53. We recommend that effect be given to the proposals in the foregoing paragraphs, by means of clauses in the following form:—

(1) *The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion.*

(2) *No law and no provision of any law hereafter made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England or to the provisions of any existing or future Act of Parliament or to any order, rule or regulation made thereunder, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.*

54. With regard lastly to the problem which arises from the existence of a legal power in the Parliament of the United Kingdom to legislate for the Dominions, we consider that the appropriate method of reconciling the existence of this power with the established constitutional position is to place on record a statement embodying the conventional usage. We therefore recommend that a statement in the following terms should be placed on record in the proceedings of the next Imperial Conference—

"*It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.*"

We further recommend that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom.

55. Practical considerations affecting both the drafting of Bills and the interpretation of Statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:—

"*Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof.*"

56. The association of constitutional conventions with law has long been familiar in the history of the British Commonwealth; it has been characteristic of political development both in the domestic government of these communities and in their relations with each other; it has permeated both executive and legislative power. It has provided a means of harmonizing relations where a purely legal solution of practical problems was impossible, would have impaired free development, or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the constitutional principles and doctrines which are in practice regarded as binding and sacred whatever the powers of Parliaments may in theory be.

57. If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. We then proceeded to consider whether in these circumstances special provision ought to be made with regard to certain subjects. These seemed to us to fall into two categories, namely, those in which uniform or reciprocal action may be necessary or desirable for the purpose of facilitating free co-operation among the members of the British Commonwealth in matters of common concern, and those in which peculiar and in some cases temporary conditions in some of the Dominions call for special treatment.

58. By the removal of all such restrictions upon the legislative powers of the Parliaments of the Dominions and the consequent effective recognition of the equality of these Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free association of the members of the British Commonwealth of Nations.

59. As, however, these freely associated members are united by a common allegiance to the Crown, it is clear that the laws relating to the succession to the Throne and the Royal Style and Titles are matters of equal concern to all.

60. We think that appropriate recognition would be given to this position by means of a convention similar to that which has in recent years controlled the theoretically unfettered powers of the Parliament of the United Kingdom to legislate upon these matters. Such a constitutional convention would be in accord with and would not derogate from and is not intended in any way to

derogate from the principles stated by the Imperial Conference of 1926 as underlying the position and mutual relations of the members of the British Commonwealth of Nations. We therefore recommend that this convention should be formally put on record in the following terms:—

"*Inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.*"

61. We recommend that the statement of principles set out in the three preceding paragraphs be placed on record in the proceedings of the next Imperial Conference, and that the constitutional convention itself in the form which we have suggested should appear as a formal recital or preamble in the proposed Act to be passed by the Parliament of the United Kingdom.

62. The second subject which we considered concerns the effect of the acquisition of full legislative powers by the Parliaments of the Dominions possessing federal Constitutions.

63. Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. The fact that no specific provision was made for effecting desired amendments wholly by Canadian agencies is easily understood, apart from the special conditions existing in Canada at that time, when it is recalled that the British North America Act, 1867, was the first Dominion federation measure and was passed over sixty years ago, at an early stage of development. It was pointed out that the question of alternative methods of amendment was a matter for future consideration by the appropriate Canadian authorities and that it was desirable therefore to make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect. It was also pointed out that for a similar reason an express declaration was desirable that nothing in the Act should authorize the Parliament of Canada to make laws on any matter at present within the authority of the Provinces, not being a matter within the authority of the Dominion.

64. The Commonwealth of Australia was established under, and its Constitution is contained in an Act of Parliament of the United Kingdom, the Commonwealth of Australia Constitution Act, 1900. The authority of the Constitution, with its distribution of powers between the Commonwealth and States, originated in the first instance from the supremacy of Imperial legislation; and it was pointed out that the continued authority of the Constitution is essential to the maintenance of the federal system. The Constitution of the Commonwealth, though paramount law for the Parliament of the Commonwealth, is subject to alteration by the joint action of Parliament and the Electorate. To that extent the Commonwealth need not have recourse to any authority external to itself for alterations of its instrument of government. But "the Constitution," though the main part, is not the whole of the Commonwealth of Australia Constitution Act; and the eight sections of that which precede the section containing "the Constitution" can be altered only by an Act of the Parliament of the United Kingdom. It will be for the proper authorities in Australia in due course to consider whether they desire this position to remain and, if not, how they propose to provide for the matter.

65. The Constitution of New Zealand is to a very considerable extent alterable by the Parliament of New Zealand; but the powers of alteration conferred by the Constitution are subject to certain qualifications, and it is apparently a matter of doubt whether these qualifications have been removed by Section 5 of the Colonial Laws Validity Act. It appears to us that any recommendations in relation to the Constitution of the Dominion of Canada and the Commonwealth of Australia should also be applied to New Zealand; and it will then be for the appropriate authorities in New Zealand to consider whether, and, if so, in what form, the full power of alteration should be given.

66. We are accordingly of opinion that the inclusion is required in the proposed Act of the Parliament of the United Kingdom of express provisions dealing with the matters discussed in the three preceding paragraphs, and we have prepared the following clauses:—

(1) *Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the law and constitutional usage and practice heretofore existing.*

(2) *Nothing in this Act shall be deemed to authorize the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the case may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.*

67. Similar considerations do not arise in connection with the Constitutions of the Union of South Africa and the Irish Free State. The Constitutions of both countries are framed on the unitary principle. Both include complete legal powers of constitutional amendment. In the case of the Union of South Africa the exercise of these powers is conditioned only by the provisions of section 152 of the South Africa Act, 1909. In the case of the Irish Free State they are exercised in accordance with the obligations undertaken by the Articles of Agreement for a Treaty signed at London on the 6th day of December, 1921.

68. The Report of 1926 dealt only with the constitutional position of the Governments and Parliaments of the Dominions. In recommending the setting up of the present Conference it did not make any specific mention of the special problems presented by federal Constitutions, and accordingly the present Conference has not been called on to consider any matters relating to the legislative powers of the Provincial Legislatures in Canada or the State Legislatures in Australia. The federal character of the Constitutions of Canada and Australia, however, gives rise to questions which we have not found it possible to leave out of account, inasmuch as they concern self-government in those Dominions.

69. The Constitution of Australia presents a special problem in respect to extra-territorial legislative power. The most urgently required field of extra-territorial power is criminal law, which, in general, is within the State power in Australia. In Australia the Parliaments of the States are not subject to any specific territorial restrictions; they differ from the Commonwealth Parliament only in this, that their laws have not the extended operation specifically given to the laws of the Commonwealth Parliament by Section 5 of the Commonwealth of Australia Constitution Act, and that the Commonwealth Parliament has power over certain specific matters which look beyond the territory of the Commonwealth. The question whether the power of enacting extra-territorial laws over matters within its sphere, to be enjoyed by the Commonwealth Parliament in common with the Parliaments of other Dominions, should be granted also to State Parliaments is a matter primarily for consideration by the proper authorities in Australia.

70. The Australian Constitution also presents special problems in relation to disallowance and reservation. In Australia there is direct contact between the States and His Majesty's Government in the United Kingdom in respect of disallowance and reservation of State legislation. This position will not be affected by the report of the present Conference.

71. The question of the effect of repugnance of Provincial or State legislation to Acts of the Parliament of the United Kingdom presents the same problems in Canada and in Australia. The recommendations which we have made with regard to the Colonial Laws Validity Act do not deal with the problems of Provincial or State legislation. In the absence of special provision, Provincial and State legislation will continue to be subject to the Colonial Laws Validity Act and to the legislative supremacy of the Parliament of the United Kingdom, and it will be a matter for the proper authorities in Canada and in Australia to consider whether and to what extent it is desired that the principles to be embodied in the new Act of the Parliament of the United Kingdom should be applied to Provincial and State legislation in the future.

72. We pass now to the subject of nationality, which is clearly a matter of equal interest to all parts of the Commonwealth.

73. Nationality is a term with varying connotations. In one sense it is used to indicate a common consciousness based upon race, language, traditions, or other analogous ties and interests and is not necessarily limited to the geographic bounds of any particular State. Nationality in this sense has long existed in the

older parent communities of the Commonwealth. In another and more technical sense it implies a definite connection with a definite State and Government. The use of the term in the latter sense has in the case of the British Commonwealth been attended by some ambiguity, due in part to its use for the purpose of denoting also the concept of allegiance to the Sovereign. With the constitutional development of the communities now forming the British Commonwealth of Nations the terms "national," "nationhood," and "nationality," in connection with each member, have come into common use.

74. The status of the Dominions in international relations, the fact that the King, on the advice of his several Governments, assumes obligations and acquires rights by treaty on behalf of individual members of the Commonwealth, and the position of the members of the Commonwealth in the League of Nations, and in relation to the Permanent Court of International Justice, do not merely involve the recognition of these communities as distinct juristic entities, but also compel recognition of a particular status of membership of those communities for legal and political purposes. These exigencies have already become apparent; and two of the Dominions have passed Acts defining their "nationals" both for national and for international purposes.[1]

75. The members of the Commonwealth are united by a common allegiance to the Crown. This allegiance is the basis of the common status possessed by all subjects of His Majesty.

76. A common status directly recognized throughout the British Commonwealth in recent years has been given a statutory basis through the operation of the British Nationality and Status of Aliens Act, 1914.

77. Under the new position, if any change is made in the requirements established by the existing legislation, reciprocal action will be necessary to attain this same recognition the importance of which is manifest in view of the desirability of facilitating freedom of intercourse and the mutual granting of privileges among the different parts of the Commonwealth.

78. It is of course plain that no member of the Commonwealth either could or would contemplate seeking to confer on any person a status to be operative throughout the Commonwealth save in pursuance of legislation based upon common agreement, and it is fully recognized that this common status is in no way inconsistent with the recognition within and without the Commonwealth of the distinct nationality possessed by the nationals of the individual states of the British Commonwealth.

79. But the practical working out and application of the above principles will not be an easy task nor is it one which we can attempt to enter upon in this report. We recommend, however, that steps should be taken as soon as possible by consultation among the various Governments to arrive at a settlement of the problems involved on the basis of these principles.

80. There are a number of subjects in which uniformity has hitherto been secured through the medium of Acts of the Parliament of the United Kingdom of general application. Where uniformity is desirable on the ground of common concern or practical convenience we think that this end should in the future be sought by means of concurrent or reciprocal action based upon agreement. We recommend that uniformity of the law of prize and co-ordination of prize jurisdiction should agreeably with the above principle be maintained. With regard to such subjects as fugitive offenders, foreign enlistment and extradition in certain of its aspects, we recommend that before any alteration is made in the existing law there should be prior consultation and, so far as possible, agreement.

81. Our attention has been drawn to the definition of the word "Colony" in Section 18 of the Interpretation Act, 1889, and we suggest that the opportunity should be taken of the proposed Act to be passed by the Parliament of the United Kingdom to amend this definition. We have accordingly prepared the following clause:—

*In this Act and in every Act passed after the commencement of this Act the expression "Dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State or any of them, and the expression "Colony" shall, notwithstanding anything in the Interpretation Act, 1889, not include a Dominion or any Province or State forming part of a Dominion.*

[1] Cf. No. CC.

82. In making the recommendations contained in this part of our Report, we have proceeded on the assumption that the necessary legislation and the constitutional conventions to which we have referred will in due course receive the approval of the Parliaments of the Dominions concerned.

## PART VI. MERCHANT SHIPPING LEGISLATION AND COLONIAL COURTS OF ADMIRALTY ACT, 1890

### (1) *Merchant Shipping Legislation.*

*Present Position.*

83. The general position is that the Dominions are empowered by their Constitutions to enact laws relating to merchant shipping subject to varying limitations. For instance, in the constitutions of Canada and Australia [1] "Navigation and Shipping" is expressly mentioned as one of the matters in respect of which their Parliaments may legislate, but under legislation extending to the Dominions, or to the territories which now constitute the Dominions, which was enacted by the Parliament of the United Kingdom before 1911, and which is still the controlling legislation in respect of merchant shipping, the legislatures of the Dominions are treated as subordinate legislatures. The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues to be applicable to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

84. Since the year 1911 the practice has been established that enactments of the Parliament of the United Kingdom in relation to merchant shipping and navigation have not been made applicable to the Dominions. In general, all shipping legislation passed by the Parliament of the United Kingdom since that date has been so framed as not to extend to the Dominions.

85. In view of the continued growth of the Dominions, it was inevitable that there should be doubts and difficulties as to the extent of the powers of the Dominions with respect to merchant shipping legislation, and this occasioned differences of opinion from time to time. The decisions of the courts, however, indicate in some of the Dominions that, because of the operation in those Dominions of the Colonial Laws Validity Act, 1865, the legal position is that statutes in respect of merchant shipping passed by the Parliament of the United Kingdom, both before and after the date of the respective constitutions, override any repugnant legislation passed by a Dominion Parliament. In the Commonwealth of Australia the Act of the Parliament of the United Kingdom in relation to shipping has been construed by the High Court of Australia as intending to deal with the subject of merchant shipping as a single integer, subject only to specific exceptions, so that repugnancy in legislation of the Parliament of the Commonwealth of Australia to that central and commanding intention is repugnancy to the Act of the Parliament of the United Kingdom.

86. An examination of the legislation passed by the Parliament of the United Kingdom before the year 1911 in respect of merchant shipping shows that it applies to a large extent to all the Dominions and to all British ships. The principal Acts now in force are the Merchant Shipping Acts, 1894 to 1906.

87. Under these Acts, combined with the operation in the Dominions of the Colonial Laws Validity Act, 1865, the present legal position of such Dominions as Canada and Australia, as interpreted by their courts, may be summarized generally as hereinafter mentioned. We refer particularly to Canada and Australia because the courts of these Dominions have been called upon more frequently than those of other Dominions to pronounce upon the constitutional questions involved.

[1] In the case of Australia, this is qualified by the fact that 'navigation and shipping' is itself comprised within the matter of trade and commerce with other countries and among the States, so that intra state shipping belongs not to the Commonwealth Parliament but to the States. The consequences arising from this division of power within Australia itself lie outside the consideration of this Conference.

(*a*) The Parliament of the Dominion, under the authority contained in Section 735 of the Merchant Shipping Act, 1894 (which is a re-enactment of Section 547 of the 1854 Act), may repeal any provisions of the 1894 Act or its amendments (other than those of the third part thereof which relates to emigrant ships) relating to ships registered therein. The Dominion Parliament is then in a position to substitute its own laws.

(*b*) The Act providing for the repeal must be confirmed by His Majesty in Council, and does not take effect until the approval has been proclaimed in the Dominion.

(*c*) As registration under Part 1 of the 1894 Act may be held to be a condition which must be in existence before Section 735 can operate, it has apparently been assumed that there is no power under Section 735 to repeal certain of the provisions of Part 1 which provide the machinery for registration. Neither Canada nor Australia has included in its shipping legislation any provisions for registration, except that the Canadian Act provides for recording a mortgage on a ship about to be built, or being built.

(*d*) Under Section 265 of the 1894 Act, if there is any conflict of laws on the subject of the second part of the Act (which relates to masters and seamen), the case is apparently to be governed by the provisions of the 1894 Act, and not by the laws of the Dominion.

(*e*) The authority of the Parliament of a Dominion to enact legislation having extra-territorial operation in respect of shipping, except where specifically authorized under legislation of the Parliament of the United Kingdom, has been questioned. An example of such authorization is found in Section 264 of the 1894 Act, which relates to masters and seamen, and authorizes the operation of extra-territorial legislation by a Dominion, but only when such legislation applies or adapts provisions which are similar to those of the 1894 Acts. Another example of such authorization is found in the Commonwealth of Australia Constitution Act, 1900, which provides that: "The laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth." This provision has been held not to confer any new subject matter of power but merely to define the extent of operation of laws enacted within a subject matter granted. In effect, it establishes that on the ships comprised within its terms Australian law operates outside the three-mile limit as well as within that limit, but it is far from being a provision extending to all Australian shipping. The High Court of Australia has held that it applies only to cases where the beginning and the end of the voyage are both in the Commonwealth. While, therefore, the extra-territorial operation of Commonwealth laws is not ousted merely because the ship's itinerary includes some foreign port, provided that there is a single round voyage beginning and ending in the Commonwealth, it does not include cases where the ship is making separate foreign voyages out and home, and her home port is in Australia.

(*f*) The Parliament of the Dominion has not authority to enact legislation repugnant to the legislation of the Parliament of the United Kingdom in relation to ships coming into the harbours or territorial waters of the Dominion, if such ships are registered in other parts of the British Commonwealth of Nations, or are foreign ships.

(*g*) The Parliament of the Dominion has not authority to enact legislation repugnant to the provisions of the third part of the 1894 Act in relation to emigrant ships registered in the Dominion.

(*h*) The Parliament of the Dominion, under Section 736 of the 1894 Act (which is a re-enactment of Section 4 of the Merchant Shipping (Colonial) Act, 1869), may enact legislation to regulate the coasting trade of such Dominion. This legislation, however, must contain a suspending clause providing that the Act shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion; the legislation must treat all British ships (including ships of any other British possession) in exactly the same manner as ships of such Dominion; and, where by treaty made before 1869 "Her Majesty has agreed to grant to any ships of any foreign State any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding."

88. Further, the legal situation appears to be confused because of the fact that,

as already explained, legislation of the Parliament of the United Kingdom in relation to shipping continued to be made applicable to the Dominions from 1854 until 1911, but after that date such legislation was expressed not to extend to the Dominions; the restrictions, however, imposed by the Merchant Shipping Acts, 1894 to 1906, were not removed; and in view of the provisions of the Colonial Laws Validity Act, 1865, legislation passed by a Dominion Parliament on the subject of merchant shipping might be held to be void and inoperative on the ground of repugnancy.

89. What, therefore, the Parliament of such a Dominion as Canada or Australia is required to do since the year 1911 is, by means of its own legislation, to endeavour to work into the existing shipping legislation of the Parliament of the United Kingdom, applicable to such a Dominion, certain modifications and additions embodied in international conventions to which the Dominion may be a party, or which may otherwise be desired. This it must do, avoiding repugnancy to any legislation of the Parliament of the United Kingdom, and avoiding also the field of legislation into which the Parliament of a Dominion cannot enter by reason of restrictive provisions in the Merchant Shipping Act, 1894, and in such Acts as the Colonial Courts of Admiralty Act, 1890. This in some cases may be impossible. For intance, the Brussels International Maritime Conference of 1926 agreed upon certain rules of law relating to maritime mortgages and liens, and other rules relating to the limitations of the liability of owners of seagoing vessels. If a Dominion Parliament desired to confer upon its courts jurisdiction and authority to enforce these rules of law, it might find it impossible to enact legislation fully implementing the conference agreement in respect of foreign ships or ships registered outside the Dominion, as these fields of jurisdiction appear to be partially, if not wholly, reserved for the Parliament of the United Kingdom. In respect of mortgages and liens there may even be difficulty for the same reason in regard to ships registered in the Dominion itself.

90. In the Report of the Imperial Conference of 1926, it was pointed out that existing legislative forms are admittedly not wholly in accord with the constitutional status of the United Kingdom and the Dominions as described in the Report. It was also pointed out that this was inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. This is obviously the case in connection with merchant shipping legislation, and the need for immediate remedy is quite apparent.

*The New Position.*

91. Our general conclusions on the Operation of Dominion Legislation, including the recommendations regarding extra-territorial effect of Dominion laws, the Colonial Laws Validity Act, 1865, reservation and disallowance, are applicable to the constitutional position of legislation affecting merchant shipping.

92. When these conclusions are given effect to, and the restrictions imposed on Dominion Parliaments by Sections 735 and 736 of the Merchant Shipping Act, 1894, are removed by the Parliament of the United Kingdom, which we recommend should be done, there will no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor will Dominion laws be liable to be held inoperative on the ground of repugnancy to laws passed by the Parliament of the United Kingdom.

93. The new position will be that each Dominion will, amongst its other powers, have full and complete legislative authority over all ships while within its territorial waters or engaged in its coasting trade; and also over its own registered ships both intra-territorially and extra-territorially. Such extra-territorial legislation will, of course, operate subject to local laws while the ship is within another jurisdiction.

94. The ground is thus cleared for co-operation amongst the members of the British Commonwealth of Nations on an equal basis in those matters in which practical considerations call for concerted action. This concerted action may take the form of agreements, for a term of years, as to the uniformity of laws throughout the British Commonwealth of Nations; as to the reciprocal aid in the enforcement of laws in jurisdictions within the British Commonwealth outside the territory of the enacting Parliament; and as to any limitations to be observed in the exercise of legislative powers.

*Recommendations.*

95. As shipping is a world-wide interest, in which uniformity is from the nature of the case desirable, there is a strong presumption in favour of concerted action between the members of the British Commonwealth in shipping matters, but this concerted action must from its nature result from voluntary agreements by the members of the Commonwealth; it should be confined to matters in which concerted action is necessary or desirable in the common interest; it should be sufficiently elastic to permit of alterations being made from time to time as experience is gained; and it must not prevent local matters being dealt with in accordance with local conditions. The kind of agreement which we have in mind in making our recommendations is one extending over a fixed period of years and providing for revision from time to time.

96. It would be difficult, and is not necessary, at the present stage to frame a complete list of the shipping questions on which uniformity is desirable, but certain matters stand out clearly and we submit the following recommendations with regard to them.

97. *Common Status.*—(*a*) There should be agreed uniform minimum qualifications for ownership to govern the admission of ships to registry in all parts of the British Commonwealth of Nations. The provisions of Section 1 of the Merchant Shipping Act, 1894, would appear to form a suitable basis for that purpose.

(*b*) Ships complying with these agreed qualifications for ownership and registered in any part of the British Commonwealth of Nations will possess a common status for all purposes and will be entitled to the same recognition as is now accorded to British ships.

98. *Standards of Safety.*—(*a*) It is desirable in the interests of all parts of the Commonwealth that uniform standards should be observed in all matters relating to the safety of the ship and those on board, so that the substantial uniformity which at present prevails in these matters on all ships of the British Commonwealth of Nations should be maintained and their reputation preserved.

(*b*) With regard to the means for securing this uniformity, it is to be observed that the tendency is for matters relating to the safety of the ship and those on board to be regulated by international agreements such as the International Convention for the Safety of Life at Sea, 1929, which deals with the construction of passenger ships, life-saving appliances on passenger ships, radiotelegraphy, and certain matters relating to the safety of navigation including proposed amendments to the International Regulations for Preventing Collisions at Sea. Where there is such international regulation the observance of uniform standards is secured by the general adoption of the appropriate conventions.

(*c*) In those matters in which standards of safety have not yet been settled by international agreements, there is at present, in fact, substantial uniformity throughout the Commonwealth. Under the new position each part of the Commonwealth will be free to adopt its own standards for its own ships and for all ships within its jurisdiction, but for practical reasons it is desirable that each part should inform the others of any modifications of substance which it may make or propose to make in those standards, together with the reasons for the modification, in order that uniformity of standards may, so far as possible, be maintained.

99. *Extra-territorial Operation of Legislation.*—(*a*) Each part of the British Commonwealth, in the exercise of the power to legislate with extra-territorial effect with regard to ships, should accept the principle that legislation with extra-territorial effect passed in one part of the Commonwealth should not be made to apply to ships registered in another part without the consent of that latter part.

(*b*) This recommendation is not intended to limit the power of any part of the British Commonwealth over its coasting trade.

100. *Uniform Treatment.*—(*a*) At present all British ocean-going ships are treated alike in all ports of the British Commonwealth and, as stated in the Resolutions of the Imperial Economic Conference of 1923, it is the established practice to make no discrimination between ocean-going ships of all countries using ports in the Commonwealth. In view of the importance that is attached to uniformity of treatment, it is recommended that the different parts of the Commonwealth should continue not to differentiate between their own ocean-going ships and similar ships belonging to other parts of the Commonwealth. Such uniformity of treatment is regarded as an asset of very considerable importance, especially for the purpose of negotiations with foreign Governments who may seek

to discriminate in favour of their own ships and against British Commonwealth ships.

(*b*) Under the new position, each part of the Commonwealth will have full power to deal with its own coasting trade. We recommend that the Governments of the several parts of the Commonwealth might agree, for a limited number of years, to continue the present position, under which ships of any part of the Commonwealth are free to engage in the coasting trade of any other part.

(*c*) These recommendations are not intended to affect the right of any part of the Commonwealth to impose conditions of a general character on all ships engaged in its coasting trade, or to impose customs tariff duties on ships built in other parts of the Commonwealth or outside it, or to give such financial assistance as it thinks fit to its own ships.

(*d*) These recommendations are also not intended to include any reference to questions affecting fisheries or the fishing industry, which were not considered to be within the scope of the Conference.

(*e*) It is recommended that no part of the British Commonwealth should give more favourable treatment to foreign ships than to ships of other parts of the Commonwealth.

(*f*) The precise manner of giving effect to these recommendations, if they are approved, will, we assume, be determined by the Governments of the British Commonwealth. So far as we are concerned, we suggest that an agreement might be made between the several parts of the Commonwealth for a limited term of years, containing a provision that the principles would not be departed from after the expiration of the agreed term without previous notification to the other members of the Commonwealth and consideration of their views.

101. *Internal Discipline and Agreements with the Crew.*—Each part of the British Commonwealth in the exercise of its right to legislate for all ships within its territorial jurisdiction should, for practical reasons, accept the principle that, in matters relating to the internal discipline of the ship and in matters governed by the agreement with the crew, the law of the country of registration should follow the ship, but this principle should be subject to the following exceptions:—

(*a*) If a ship registered in one part of the British Commonwealth is engaged wholly or mainly in the coasting trade of another part, the law of that latter part should govern matters relating to the internal discipline of the ship and matters relating to the agreement with the crew.

(*b*) In the case of a ship registered in one part of the Commonwealth, if an agreement with the crew is opened in another part of the Commonwealth, the law of that latter part as regards the agreement with the crew should apply.

102. *Certificates of Competency and Service.*—Subject to any special arrangement as to the coasting trade, certificates granted by one part of the Commonwealth should be recognized as valid throughout the Commonwealth for all ships registered in that part. It is recommended that there should be such uniform qualifications throughout the Commonwealth for certificates of competency as will facilitate a mutual recognition of such certificates for all purposes.

103. *Courts of Inquiry.*—(*a*) Investigations with regard to casualties to ships registered in any part of the Commonwealth will be held by that part of the Commonwealth in which the ship is registered, no matter where the casualty takes place, if that part so desires. Each part of the Commonwealth will, if it so desires, hold investigations into casualties to any ships no matter where registered if the casualty occurs on or near the coasts of that part or while the ship is engaged in the coasting trade of that part. With regard, however, to casualties to ships registered in one part of the Commonwealth which take place elsewhere than on or near the coasts of another part of the Commonwealth or while the ship is engaged otherwise than in the coasting trade of that other part, it is recommended that an agreement be made based upon the general principle (from which agreed exceptions may be necessary) that no inquiry should be held by any part other than the part in which the ship is registered except with the consent or at the request of that part. It is also recommended that an agreement be made that the principles governing the constitution and procedure of Courts of Formal Investigation should be uniform throughout the Commonwealth and should provide such safeguards as are at present furnished by Part V I of the Merchant Shipping Act, 1894. It is also recommended that a right of appeal from a Court of Formal Investigation should exist and that such appeal

should lie in the appropriate Court in that part of the Commonwealth in which the investigation takes place.

(*b*) Every Court of Formal Investigation constituted under the authority of one part of the Commonwealth should have power to cancel or suspend a certificate granted by any other part of the Commonwealth. Such cancellation or suspension will have effect only within the jurisdiction of that part of the Commonwealth under whose authority the Court was constituted, but will, if adopted by the granting authority, have the effect of a cancellation or suspension by that authority.

(*c*) With regard to Courts which deal with questions of misconduct and incompetency other than would be ordinarily dealt with by Courts of Formal Investigation, it is recommended that the procedure of these Courts and the principles upon which such Courts should be constituted and on which certificates should be dealt with should be those recommended above with regard to Courts of Formal Investigation.

104. *Naval Courts.*—Naval Courts are *ad hoc* Courts summoned under the authority of the Merchant Shipping Act, 1894, by a Naval or Consular Officer in a foreign port to deal with casualties and other matters relating to a ship, her owners, master or crew. The position of these courts does not, having regard to their constitution, seem to be one in which any question of reciprocal agreement arises. Under the new position each part of the Commonwealth will be able to take steps if it so desires either to continue the facilities at present offered by these Courts or to discontinue them with regard to its own registered ships and substitute other facilities.

105. *Distressed Seamen.*—It is recommended that reciprocal arrangements be made between all parts of the Commonwealth to provide for and facilitate in proper cases the return to each part of the Commonwealth of distressed seamen of that part and also, so far as is practicable, to enable the authorities of each part to recover the reasonable cost of repatriation from the owner of the vessel in which the seamen served.

106. *Mutual Enforcement of Law.*—(*a*) We have examined very carefully the question as to how far, if at all, it would be practically possible to make provision for the enforcement in one part of the Commonwealth of the law of another part with regard to offences occurring on ships registered in that other part of the Commonwealth. At first sight it would appear that some such provision could be made to work satisfactorily, but upon consideration it seems clear that the practical and other difficulties in the way of such mutual enforcement of laws are so great as to make it impossible to recommend any general arrangement of this kind. The position which obtains at present is only possible because the system of law which is applied is a unitary system and when that system comes to an end a solution of the difficulties which arise will have to be sought in other directions.

(*b*) Thus with regard to ordinary crimes committed on ships it is thought that the remedy will be to provide some workable scheme based upon reciprocal agreement and legislation enacted by each part of the Commonwealth, whereby the system which operates at present under the Fugitive Offenders Act 1881 may be continued.

(*c*) Again, with regard to offences against merchant shipping legislation it is suggested that the difficulties will to a great extent disappear if uniformity is agreed upon by all parts of the Commonwealth in matters relating to safety of the ships and persons on board. If there is such uniformity, the result will, in most cases, be that if an offence is committed with regard to a ship when she leaves one part of the Commonwealth it will be found on her arrival in another part of the Commonwealth that she has therein contravened the local law, with the result that proceedings in respect of that offence may be taken there.

(*d*) With regard to offences against discipline committed on the high seas, it will probably be found that the law of that part in which the vessel is registered makes provision for disciplinary action by the master of the ship. If, however, the offence is such as to necessitate legal proceedings those proceedings will be available when the offender returns to that part of the Commonwealth in which the ship is registered.

107. *Forfeiture.*—(*a*) Proceedings for forfeiture for contravening the common qualifications for ownership will be taken in the Courts in that part of the Commonwealth in which the ship is registered. Proceedings of this kind, however,

may be taken with regard to ships registered in one part of the Commonwealth in the Courts of another part if the authorities of the part where the ship is registered so request. The forfeiture will be for the benefit of the Exchequer of the part in which the ship is registered.

(*b*) With regard to an unregistered ship wrongly assuming the character of a registered ship, proceedings may be taken in any part of the Commonwealth into which the ship is taken.

108. *Carriage of Goods by Sea.*—This is a subject on which in our opinion uniformity of legislation is highly desirable throughout the British Commonwealth and in this connection attention is drawn to the Resolution passed by the Imperial Conference of 1926 in the following terms:—

> "The Imperial Conference, having considered the steps taken to bring into force the Rules relating to Bills of Lading which were embodied in the International Bills of Lading Convention signed at Brussels in October, 1923, and were recommended by the Imperial Economic Conference of 1923 for adoption by the Governments and Parliaments of the Empire, notes with satisfaction that there is good prospect of the general adoption of these Rules throughout the Empire and also welcomes the progress which has been made towards the achievement of international uniformity upon the basis of these Rules."

109. *General Statement.*—(*a*) We have, after describing the present position with regard to merchant shipping legislation and outlining the general nature of the new position which will take its place, indicated a number of matters connected with merchant shipping in which, in our view, uniformity of laws throughout the British Commonwealth is of great importance in the interests of all, but those who may be intrusted with the duty of preparing the terms of agreements and the form of legislation to implement those agreements may find it desirable to include other matters besides those which have been specifically mentioned.

(*b*) For instance, we recommend that there should be uniformity with regard to the qualifications for ownership, but we consider that uniformity is also desirable in such matters as transfer, mortgage, measurement of ships and tonnage which are ancillary to the question of qualifications for ownership. It is quite probable that uniformity in such matters will be found to be practicable. The co-ordination of the various registers is also a matter which might well be considered with a view to an arrangement being made.

### (2) *Colonial Courts of Admiralty Act, 1890.*

110. At the present time, Admiralty Courts in all the Dominions, except in the Irish Free State, are constituted under the provisions of the Colonial Courts of Admiralty Act, 1890, passed by the Parliament of the United Kingdom. In the Irish Free State, Admiralty laws are administered under the provisions of the Courts of Admiralty (Ireland) Act, 1867, and accordingly different considerations apply there.

111. Prior to the enactment of the Colonial Courts of Admiralty Act, 1890, Admiralty law was administered in the Dominions or in the territories now forming the Dominions, other than Ireland, in Vice-Admiralty Courts which were established in the early days under the authority of the Admiralty, and in later years under the authority of enactments passed by the Parliament of the United Kingdom. The Colonial Courts of Admiralty Act, 1890, which repealed all previous enactments in relation to Vice-Admiralty Courts, provided that every court of law in a British possession, which is for the time being declared in pursuance of that Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty and that the jurisdiction of such Colonial Court of Admiralty should, subject to the provisions of the Act, be the same as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute, or otherwise. The Act also provided that any Colonial law "shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty." Apparently the intention was that the provisions of the Act should cover the whole field of Admiralty jurisdiction to the exclusion of any legislation by a Dominion. Rules for regulating the procedure and practice in the Court were authorized to be made by a Colonial Court of Admiralty, but such rules should not come into operation until approved by His Majesty in Council. Any Colonial law made in pursuance of the Act, which affects the jurisdiction of, or practice or procedure in the Courts, in respect of the jurisdiction conferred

by the Act, must, unless previously approved by His Majesty through a Secretary of State, either be reserved for the signification of His Majesty's pleasure thereon or contain a suspending clause providing that such law shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion in which it is passed.

112. Under a recent decision of the Judicial Committee of the Privy Council, it was held that the jurisdiction of an Admiralty Court established under the Act does not march with the Admiralty jurisdiction of the High Court in England but was fixed by the Admiralty jurisdiction of the High Court as it existed when the Act was passed in 1890.

113. Since the year 1890, important additions have been made to the Admiralty jurisdiction of the High Court in England and this jurisdiction has not been added to the Courts of Admiralty in the Dominions. The jurisdiction is, therefore, not uniform at the present time throughout the United Kingdom and the Dominions. Doubts have been expressed as to whether a Dominion, in which the Act is in force, has legislative authority to increase the jurisdiction of Admiralty Courts in such Dominion or whether this must be done by an Act of the Parliament of the United Kingdom.

114. The existing situation of control in the United Kingdom of Admiralty Courts in the Dominions is not in accord with the present constitutional status of the Dominions, and should be remedied.

115. Our recommendation is that each Dominion in which the Colonial Courts of Admiralty Act, 1890, is in force should have power to repeal that Act.

116. Our general conclusions on the operation of the Colonial Laws Validity Act, 1865, and reservation and disallowance are applicable to the Colonial Courts of Admiralty Act, 1890. As soon as the legislation necessary to give effect to these recommendations is passed, each Dominion will be free to repeal if and when desired the Colonial Courts of Admiralty Act, 1890, in so far as that Act relates to that Dominion, and may then establish Admiralty Courts under its own laws.

117. We think it highly desirable to emphasize that so far as is possible there should be uniform jurisdiction and procedure in all Admiralty Courts in the British Commonwealth of Nations subject, of course, to such variations as may be required in matters of purely local or domestic interest.

118. His Majesty's Government in the United Kingdom have recently signed the International Conventions with regard to mortgages and liens and limitation of liability which were prepared at Brussels, and in this connection we would point out that the following Resolution was passed by the Imperial Conference of 1926:—

> "The Imperial Conference notes with satisfaction that progress which has been made towards the unification of maritime law in regard to the limitation of shipowners' liability and to maritime mortgages and liens by the preparation at Brussels of draft International Conventions on these subjects, and, having regard particularly to the advantages to be derived from uniformity, commends these Conventions to the consideration of the Governments of the various parts of the Empire."

119. To enable these Conventions to be ratified considerable changes will be necessary in the existing law in the United Kingdom with regard to Admiralty matters. We think it desirable that all Dominions should consider the changes proposed by the Conventions, and, if the Dominions or any of them adopt them, the opportunity might be taken, having regard to the fact that new legislation will be necessary, of endeavouring to come to some agreement that uniformity should exist upon all matters of Admiralty jurisdiction and procedure, and for this purpose it would seem that the law of the United Kingdom might form a useful basis for such an agreement.

(3) *Recommendations as to Legislation to be enacted by the Parliament of the United Kingdom with respect to Sections 735 and 736 of the Merchant Shipping Act, 1894, and the Colonial Courts of Admiralty Act, 1890.*

120. The clauses which we have recommended to be enacted by the Parliament of the United Kingdom with relation to the extra-territorial operation of Dominion legislation and the Colonial Laws Validity Act, 1865, are intended to be applicable to Merchant Shipping legislation and the Colonial Courts of Admiralty Act, 1890, as well as to other legislation of the Parliament of the United Kingdom.

121. The Merchant Shipping Act, 1894, by Section 735, now confers upon the Parliament of a Dominion a limited power of repeal. The power of repeal with regard to Merchant Shipping Acts under the new position will, however, be covered by the wider power of repeal contained in the general clause which we have recommended.

122. Moreover, Sections 735 and 736 of the Merchant Shipping Act, 1894, and Sections 4 and 7 of the Colonial Courts of Admiralty Act, 1890, contain provisions for reservation which should no longer be applicable to legislation passed by a Dominion Parliament.

123. In order to make the above position clear and to remove any doubts which may exist, we recommend that a clause in the following terms should be inserted after the above-mentioned general clauses in the Act to be passed by the Parliament of the United Kingdom:—

*Without prejudice to the generality of the foregoing provisions of this Act—*

(1) *Sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.*

(2) *Section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of Section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.*

(4) *India.*

124. Subject to certain special provisions of the Merchant Shipping Acts, the legislative powers of the Indian Legislature are governed by the Government of India Act, and general statements regarding the position of the Dominions in matters of merchant shipping and Admiralty Court legislation may therefore not be entirely applicable in the case of India. At the same time, as the position of India in these matters has always been to all intents and purposes identical with that of the Dominions, it is not anticipated that there would be any serious difficulty in applying the principles of our recommendations to India, and we suggest that the question of the proper method of so doing should be considered by His Majesty's Government in the United Kingdom and the Government of India.

## PART VII. SUGGESTED TRIBUNAL FOR THE DETERMINATION OF DISPUTES

125. We felt that our work would not be complete unless we gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth. We were impressed with the advantages which might accrue from the establishment of such a tribunal. It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard first to the constitution of such a tribunal, and, secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an *ad hoc* body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between governments. We recommend that the whole subject should be further examined by all the governments.

## PART VIII. CONCLUSION

126. It will, we trust, be apparent from the recommendations of our report that we have endeavoured to carry out the principles laid down by the Imperial Conference of 1926. The recommendations submitted have been framed with the object of carrying into full effect the equality of status established as the root-principle governing the relations of the members of the Commonwealth, and indicating methods for maintaining and strengthening the practical system of free co-operation which is its instrument.

127. We have sought to the best of our ability to perform our task and we commend our proposals to His Majesty's Governments.

128. We desire to express our very warm appreciation, and that in no mere formal sense, of the assistance which we have received throughout from the

Secretaries to the Conference. The nature of our work has involved an unusual tax upon their energy, skill, and resourcefulness, and we have all had occasion to recognize the value of their co-operation.

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|---|---|
| For the delegation of the United Kingdom of Great Britain and Northern Ireland. | Passfield.<br>William A. Jowitt. |
| For the delegation of the Dominion of Canada. | E. Lapointe. |
| For the delegation of the Commonwealth of Australia. | W. Harrison Moore. |
| For the delegation of the Dominion of New Zealand. | C. J. Parr. |
| For the delegation of the Union of South Africa. | F. W. Beyers. |
| For the delegation of the Irish Free State. | P. McGilligan. |
| For the delegation of the Government of India for such parts of the Report as relate to India. | B. K. Mullick. |

# APPENDIX

## THE COVENANT OF THE LEAGUE OF NATIONS[1]

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments,

and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

### Article 1.

1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

### Article 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

### Article 3.

1. The Assembly shall consist of Representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

### Article 4.

1. The Council shall consist of Representatives of the Principal Allied and Associated Powers,[2] together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be Mem-

[1] The Covenant is printed with the paragraphs numbered in accordance with the resolution adopted at the Seventh Ordinary Session of the Assembly on September 21, 1926, and embodying the Amendments to Article 6, in force as from August 13, 1924, to Articles 12, 13 and 15, in force as from September 26, 1924, and to Article 4, in force as from July 29, 1926.

[2] The Principal Allied and Associated Powers are the following: The United States of America, the British Empire, France, Italy, and Japan (see Preamble of the Treaty of Peace with Germany).

bers of the Council [1]; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.[2]

2 *bis.*[3] *The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Article 5.

1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article 6.

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5.[4] *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

Article 7.

1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

[1] In virtue of this paragraph of the Covenant, Germany was nominated as a permanent Member of the Council on September 8, 1926.

[2] The number of Members of the Council selected by the Assembly was increased to six instead of four by virtue of a resolution adopted by the Third Assembly on September 25, 1922. By a resolution taken by the Assembly on September 8, 1926, the number of Members of the Council selected by the Assembly was increased to nine.

[3] This Amendment came into force on July 29, 1926, in accordance with Article 26 of the Covenant.

[4] This Amendment came into force on August 13, 1924, in accordance with Article 26 of the Covenant and replaces the following paragraph:

'5. The Expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.'

Article 8.

1. The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes.

Article 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

Article 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Article 11.

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations, which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article 12.[1]

1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

2. In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article 13.[1]

1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration

[1] The Amendments printed in italics relating to these Articles came into force on September 26, 1924, in accordance with Article 26 of the Covenant and replace the following texts:

Article 12.

"The Members of the League agreed that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or to enquiry by the Council, and they

*or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*.

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

Article 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article 15.

1.[1] If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement*, in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a

agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

"In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

Article 13.

"The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

"For the consideration of any such dispute, the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

[1] The Amendment to the first paragraph of this Article came into force on September 26, 1924, in accordance with Article 26 of the Covenant, and replaces the following text:

Article 15.

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."

majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

### Article 16.

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

### Article 17.

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted,

the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Article 20.

1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Article 22.

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

### Article 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) Will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

### Article 24.

1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Article 26.

1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

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NOTE: The following Declaration respecting the interpretation of Article 4 of the Covenant was signed by M. Clemenceau, President Wilson, and Mr. Lloyd George at the Plenary Session of the Peace Conference, held on May 6th, 1919, when the draft Treaty of Peace was adopted by the Allied and Associated Powers for presentation to the German Delegation on the following day. This Declaration was incorporated in the records of the Peace Conference. The Declaration is as follows:

The question having been raised as to the meaning of Article IV of the League of Nations Covenant, we have been requested by Sir Robert Borden to state whether we concur in his view, that upon the true construction of the first and second paragraphs of that Article, representatives of the self-governing Dominions of the British Empire may be selected or named as members of the Council. We have no hesitation in expressing our entire concurrence in this view. If there were any doubt it would be entirely removed by the fact that the Articles of the Covenant are not subject to a narrow or technical construction.

Dated at the Quai d'Orsay, Paris, the sixth day of May, 1919.

(Signed) G. CLEMENCEAU.
WOODROW WILSON.
D. LLOYD GEORGE.

In conformity with this Declaration, Canada was elected, September 15, 1927 for a term of three years as a member of the Council.

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